

[Rao Bahadur K. A. Krishna Aiyangar.]

RESOLUTIONS ON MATTERS OF GENERAL PUBLIC INTEREST.

Resolution re: Throwing open of all roads to all Classes of People.—(Contd.)

PRESIDENT: We shall now resume the discussion of the resolution moved by Mr. Kumaran.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Sir, I was submitting yesterday that the essential province of a Legislative Council is not to adjudicate on disputed facts, but to lay down a policy on admitted facts relating to questions coming within its cognizance, and to give statutory recognition to that policy by necessary legislation. Applying this test, I submitted that the question relating to the Vaikom roads is not one that can be handled with advantage and given effect to with a finality by this Council. There is another difficulty against accepting the motion. So far as the Vaikom roads are concerned, some facts are placed before us. There are the marks of the P. W. D. on some of the trees on the road, for one thing; there is the lighting and the sweeping by the Municipality, for another; there is the tradition of fuel supply by the Ezhavas in times past; there is the existence of an Ezhava temple in close proximity to the approach road. The mover of the resolution, Mr. Kumaran, wants roads similarly situated in other parts of the State also to be treated on the same footing as the Vaikom road. I submit, Sir, if the question has to be answered, it is to be answered in the light of facts and circumstances relating to these temples. Are they incorporated Devaswoms or unincorporated Devaswoms or are they private Devaswoms; are the approach roads *porambokes*; are the non-caste communities allowed to pass along these approach roads; these are questions very difficult for this Council to answer either affirmatively or negatively in the absence of the necessary data, even if we concede the competency of this Council to go into this question of disputed facts.

MR. A. HOOGEWERF (*Nominated*): I beg to know whether it is not competent to this House to find out all facts relevant to the question.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): They are not before the House. What I am now concerned with is the specific motion now before the House. I may assure my friend that before I resume my seat I shall answer all his questions.

For the present, dealing with the specific resolution before the House, I submit, this Council, realising its responsibility, cannot extend their knowledge of the approach road round the Vaikom temple to other roads similarly situated without full possession of all particulars. On that ground also I have to vote against the resolution. But before I resume my seat, let me submit that, as observed by some of my friends, the voting on the resolution is not to decide the question finally. I

shall not be disappointed if the resolution is carried. I shall not feel elated if the resolution is thrown out. I feel, Sir, that the observations that I am about to make may not be quite relevant to the discussion, but still, I feel I owe a duty to myself and to the Council to give expression to a few thoughts which have been passing through my mind on this momentous and vexed question. We shall not see the last scene in the drama when the voting on this resolution is over. As a question of public policy, I submit, Sir, it is certainly the duty of the Government to see whether a solution cannot be reached. One solution that I suggested was that the Government must assume an absolutely neutral attitude and refer the aggrieved party to the Civil Court. Some of my friends tell me that it will be a costly procedure. But the money that is now being spent on the Satyagraha movement can well afford to finance a litigation however costly and however protracted it may be. As regards Satyagraha, I have never been an admirer of the methods adopted by the Satyagrahis to force the hands of Government or of any particular community. My radical objection to the encouragement of that movement is that it develops a spirit of defiance of law and authority and if that spirit spreads and is imbibed by our young men, there is always the danger of their over-stepping the strict bounds laid down by the great Mahatma in carrying out this policy of Satyagraha or non-co-operation. Non-co-operation as such has not been adopted by any member publicly in Travancore as a recognised method of securing social, moral or political amelioration in the land. This particular band of men are in a way non-co-operating with our courts, because, though the Magistrate told them that they cannot enter the prohibited area, they have not moved up till now to have the legality of that question finally settled by an appeal to a Civil Court. That may be due to two reasons. One is the financial difficulty and the other the consciousness that they cannot win their case in a court of law. Both these contingencies are perfectly possible.

MR. A. HOOGEWERF (*Nominated*): Is it not self-sacrifice that is being exercised there?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am coming to that. I am just thinking of the ways and means.

PRESIDENT: That does not arise now, Mr. Hoogewerf.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not know that my recognition of the self-less labours of the Satyagrahis is going to help us to solve the problems this evening.

As I submitted, Sir, they did not resort to the duly constituted tribunal to which, in this country, the public generally resort to in all cases where the executive prohibited the exercise of a right that is claimed by any individual or section of the public. They did not do it, as I submitted, possibly for two reasons. One is the financial difficulty and the second is the consciousness that in a Court of law they have absolutely no case to urge.

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MR. A. HOOGEWERF (*Nominated*): Does Mr. Krishna Aiyangar know that Jesus Christ did not appeal against the judgment of death passed against him?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I wonder how many are prepared to stand to be crucified. What is the good of drawing the name of such a noble and revered personality like Christ, the majority of whose followers have forgotten the real spirit of his teachings.

MR. A. HOOGEWERF (*Nominated*): Is not self-sacrifice the most important of Christ's teachings?

PRESIDENT: How is that relevant?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): My friend is at liberty to stand up on a platform and do propaganda work on behalf of his religion. Whether conversion to my friend's faith is the ultimate solution of the evil that we have now to face in life is a highly problematical question. Will my friend remember, who brought about the greatest cataclysm in the history of the world? If my friend is anxious to know what I think of the great Saviour, I may tell him that I have all along regarded him as one of the greatest personages that have ever appeared in this world.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I ask the simple question whether a suit will lie in regard to the Vaikam road, in the light of the Royal Proclamation on the subject?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The advice that I may give cannot be the basis of any action by my friend. If he would be satisfied with my advice as a lawyer, I am prepared to place it at his disposal. If he wants me to do any professional work on behalf of the cause that he is advocating, I am perfectly willing to do it. I assure him, it shall cost him nothing, if only he has perfect confidence in my capacity and integrity.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): Does my friend say that Ezhavas and others ought to have resorted to a civil court and that that would have been the better course?

PRESIDENT: That is not what he said.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): A suit to set aside the order of a Magistrate prohibiting entry into what according to my friend is a public road will lie. If my friend's case is that the road in question is a public highway in the sense in which Their Honours defined it in the 5 T. L. R. case, it is perfectly open to my friend to seek the interference of the civil court, for the declaration that the order of the Magistrate prohibiting entry is absolutely *ultra vires*. It is a perfectly simple position. Of course, law arises out of a set of facts alleged or proved. For the moment, as he

asked my legal advice, this is the answer that I give him, if his case that it is a public highway is true. I do not think there is any Proclamation standing in the way.

MR. J. JOHN NIDIRY (*Changanachery cum Minachi*): My question was, whether a civil suit will lie?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The right of passage along a thoroughfare, the right of entry into a public temple for the purpose of worship, all these are civil rights. I thought it was so elementary—

MR. A. HOOGEWERF (*Nominated*): May I ask whether it is not the order of the District Magistrate that is standing against the use of the road at Vaikom, and the order of Government perpetuating the Magistrate's order?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am not aware of any order of Government perpetuating the order of the Magistrate. Government have certain functions in enforcing the orders of their Magistrates until they are duly set aside by a court of law. The Civil Court is perfectly competent to set aside the order of the Magistrate.

MR. A. HOOGEWERF (*Nominated*): How long will the order of the District Magistrate continue to have force?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If my friend will see me afterwards—I have no objection to go to him even this evening—I am prepared to give him the benefit of my experience and views in full detail. I shall not value my time in the least.

PRESIDENT: This is a detail which you can yourself find out from the Criminal Procedure Code, Mr. Hoogewerf.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I offer to place my services at his disposal, but not now.

I am deliberately of opinion and I am sure that whatever divergence of views there may be between my legal friends and myself on the motion now under debate, there will be absolute unanimity of opinion on the question whether a Civil Court has got jurisdiction to go into the question. I hold, and hold with all the strength and sincerity of conviction which 30 years' practice of the profession has produced in me, that the jurisdiction of the Civil Courts to adjudicate upon the present question has not been taken away.

As I submitted, it is either a question of cost or a question of absolute helplessness. If it is a question of cost, I do not think there is any serious difficulty. There is so much of enthusiasm in favour of the cause that, even many who may oppose the resolution, may come forward to finance the litigation. But if their consciousness is that it is hopeless to go to a court of law because courts of law will deal with ascertaining the existence of a right and not the creation of a right where it did not

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exist—if that is their view, let them come forward and candidly say: “Here is a case, Sir, where through the operation of causes in times past over which we had no control, our rights as citizens of the State have been taken away. The spirit of the times demands a revocation. It is desirable that the question should be investigated; it is desirable that our self-respect should be vindicated.” That is a perfectly intelligible position and it deserves the serious consideration of the Government. But that is not the aspect in which the question has been placed before the House at all. On the other hand it was said the injustice of centuries of oppression, brutality, inhuman treatment, is still surviving in this age of general progress. I object to that. I say I object to the question being put in that form. Sir, whatever might have been the causes that brought about the prohibition, I feel that the time is ripe for investigating into the causes that led to the prohibition and for devising ways and means of getting rid of what certainly looks as an anomaly in a manner satisfactory to all the parties concerned. In urging that claim, let us not weaken the cause by exaggerating faults in our opponents. As I submitted, in practice so far as public places like schools and courts and Council Halls and lecture rooms are concerned, it is no pollution. Distance pollution and untouchability are more honoured by their breach than by their observance. I say that is a fact of which this Council may more or less take judicial notice unless we are contradicted in a very serious manner. That is the first factor in favour of an investigation. Secondly, though these Satyagrahis have been behaving in a manner repugnant to the conservative instincts of a law-abiding people, there is no ignoring the fact that they have been responsible for stirring up a lot of enthusiasm in support of the movement. Their preparedness to undergo suffering has evoked for the cause a good deal of sympathy which in normal circumstances the cause might not have secured. That is the good that Satyagraha has done to the cause. As I submitted, Sir, all of us are human. The generous impulses of the heart invariably get the better of our cool judgment. You find a young man making a deliberate sacrifice of all that people hold dear from the material standpoint, standing exposed to the midday’s sun, undergoing an amount of personal suffering and ordeal not for any material object to be gained but just that he might demonstrate to the world the strength of his conviction in the movement and thus ensure popular sympathy and support for the movement. So far it is due from us; we recognise it. Sympathy for a movement is something fundamentally different from a willingness to accept it forthwith. Sympathy prepares the ground for a calm, dispassionate review of the situation. The situation can be reviewed and should be reviewed in a calm atmosphere. Is the atmosphere now calm? I say it is not. But is it difficult to create a calm atmosphere? Certainly it is not difficult. Both parties have only to recognise that each is perfectly honest in the views that it holds. If only both sides make up their minds by some means, we will get a solution that will uphold the self-respect of the one and remove the wavering doubts

in the minds of the other. Approach the question in that spirit. If the great protagonists of the movement approached the question in that spirit, I submit, Sir, it would be much easier for the Government to solve the question than it was likely to be otherwise.

MR. A. HOOGEWERF (*Nominated*): Am I to understand that Mr. Krishna Aiyangar suggests that these people should go to a court of law and there assert their rights?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): As a lawyer I can give only one answer. No lawyer can say that it is an outrageous proposal. (*Laughter.*) The party whose rights are clear and *prima facie* is not the one whom we should ask to go to a court of law, but it is the party whose rights are doubtful, who never exercised their rights in the past and who want to exercise their rights now, it is that party that should go to a court of law.

MR. A. HOOGEWERF (*Nominated*): Is that the personal opinion of the speaker or is it the opinion of the Government?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is my deliberate judgment as a lawyer. As to what Government thinks of it, let my friend Mr. Hoogewerf interrogate Government. I thought we had passed that stage, and I was just trying to develop a scheme by which a calm atmosphere might be secured and a satisfactory solution reached, the controversialists for the moment ignoring their differences.

MR. A. HOOGEWERF (*Nominated*): Is not the atmosphere here calm enough to consider the question?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is not. Our friend, Mr. Hoogewerf, has been trying to make the atmosphere very warm. (*Laughter.*)

In his enthusiasm for the work, in his over-anxiety to solve, in the course of two days, difficulties that India has been facing for thousands and thousands of years, he shows an amount of, what I may call, unhealthy anxiety to get a solution, an easy solution of a very difficult problem that has been confronting great minds both here and elsewhere, certainly for the last thirty years and more, if not earlier. Probably, my friend might remember the incident that I referred to in the life of the great Ramanuja, the Vaishnavite reformer. Many a great soul has incarnated on the face of the Globe. My friend knows that the ideal is not always reached. In the history of his own religion, there were dark days and events for which all have to feel ashamed. Later on, I will tell my friend that there is something in the position of the orthodox Hindus on which I feel ashamed. Well, as I submitted, if Mr. Hoogewerf will be courteous enough and generous enough to allow me to develop what I consider to be the feasible methods of getting over the difficulty, before he begins his interrogation, I shall not resume my seat until my friend tells me that he has exhausted all his questions. (*Laughter.*)

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MR. A. HOOGEWERF (*Nominated*): Is it not a fact that the Deputy President—

PRESIDENT: Can't you wait until he finishes the sentence?

MR. A. HOOGEWERF (*Nominated*): I may forget what he says now if I am to ask questions at the end. There are certain questions which have to be put at the proper time.

PRESIDENT: He says that he will be very much obliged to you if you could wait and put your questions at the end.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Sir, no use of recrimination, no use of resuscitating the dark pages of history that should have been forgotten. As I submitted, let there be a frank recognition that this is a claim for a right which was not in existence before. Then, the method of approaching it would be, is the claim unreasonable? Can the claim be recognised and enforced without prejudice to other vested interests? Those will be the questions. So far as the first part is concerned, I do not think that there can be any serious difference of opinion that all sections of the Hindu community should be allowed to pass through roads open to non-caste Hindus. A little while ago I told my friend that there are some views of the conservative Hindu, the memory of which upsets me and I have to bow my head in shame, (Mr. Hoogewerf: *Hear, hear*) and I propose to deal with one of them. So long as a man worships the gods in the Hindu Pantheon, so long as he calls himself Madhavan, Govindan, Paramesvaran, Kumaran, we tell him "please keep out, because you are not in the first four castes." He changes his name into Pereira, or Abdul Latif—we shake hands with him! That is the question the memory of which, not now, Sir, but ever since I began to bestow any thought upon these social questions, made me feel so sad and which has at times made it difficult for me to reconcile my ideas of reverend devotion to the founders of this great religion. (Mr. Hoogewerf, *Hear, hear*.) The monotheism of Sankara, its inspiring, daring message is a trumpet-call to all humanity to recognise their essential unity. It is the land of Sankaracharya in which we are living. The revered Ramanuja sent out a message exactly like that. Other great reformers have appeared in this holy land—Dayananda Saraswathi, Ram Mohan Roy, Ramakrishna Paramahansa,—men of out-standing personality. Leaving apart great beings whom we worship as *avatars*, leaving apart great Lords of Compassion, like Christ, Budha, Sri Krishna, Ramachandra—looking at the ideals laid down for the guidance of the Hindu community, the essential unity of man; "I am Esvara", that message that Sankara gave to the world has not been altogether forgotten by India. We are born in the land of his birth, that idea occasionally rushes through our veins. A friend, who worships the God that I worship, who gives his children the name that I gave my children, cannot exercise the rights of passage which we accord to the followers of other religions—is it not a weakening of the Hindu ranks, especially in these progressive days of

democratic Government when loaves of offices and rights of representation are sought to be determined not necessarily by merit or by efficiency alone, but by the census figures? It is a very low view. (Mr. Hoogewerf, *Hear, hear.*) I am merely making a casual reference to it. This view has never weighed with me in thinking over this problem. Still, to men who are materially minded there is that point; and I mention it for what it is worth. Those ideals are still alive. Naturally I may be asked: "Are you consistent with those ideals which you say you sincerely recognise?" I hope my friends who differ from me will not question me for taking this view. That has been my cherished faith ever since I began to bestow any thought on this question. What perhaps upsets me more than anything else is, why this right that we accord to non-Hindus we deny to non-caste Hindus.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May it not be due to the tolerance of Hindu religion?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Mr. Nidiry knows that, of all the great religions in the world, Hinduism has been the most tolerant because it never attempts at proselytizing, because of that fact, Christians have been living on this coast for a period of about two thousand years without being prosecuted by the State but encouraged and supported by the Hindu Sovereigns. This is ample proof, if proof were needed, of the tolerance of the Maha Rajas of Travancore. (Mr. Hoogewerf: *Hear, hear.*)

The Kalladai island is a standing monument of the spirit of recognition of the good work done by non-Hindus in the land. I can tell my friend another small incident. At a place called Pazhavangadi in the Alleppey town you have got a Hindu temple, a Mahomedan mosque and a Christian church in close proximity, the compound walls of the one actually touching the other. You hear of Hindu-Mahomedan ryots and Hindu-Christian disturbances. But within the memory of the oldest inhabitant in the town, there has not been any misunderstanding—well, that is proof if proof were wanted. Where people are determined to live in unity, nothing under the sun is going to disturb that unity. Well, Sir, let me proceed a step further.

MR. A. HOOGEWERF (*Nominated*): If I am not interrupting him, may I ask a question? Does the Deputy President know that in the church of Verapoli, fifty *fanams* is still being given by the Travancore Government for burning a light before the Blessed Sacrament?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Yes, it is not the only case. I was thinking of the Kalladai island because, yesterday in an interpellation, there was a reference to that as a free gift during the time of Col. Munro for encouraging Syrian Christians. To educate Syrian youths 3,000 star pagodas were given. So also Jews got certain rights from the ancient Maha Rajas of Kerala. So, if a Hindu does not necessarily object to a man because he is a non-Hindu, that certainly has not been the feeling towards the non-caste Hindus. No doubt there might be other incidents which may excite a scoffing smile from the lips of those who do not care to approach it in a

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spirit of enquiry and information. As I submitted a little while ago, it is perfectly possible then to ensure harmony. I said, if we allow this concession to non-Hindus, why should we not accord it to Hindus, simply because they are not included in the four castes. I was just trying to ascertain whether this prohibition of entry into an approach road follows any uniform principle with reference to temples in Travancore, whether this prohibition applies in all cases and the conditions under which the prohibition is enforced. Well, we have heard of it, at Vaikom. In the town of Alleppey there is a place called Mullakkal Street. It is a king's thoroughfare. Whatever it might have been in times past, all classes of people are using it now. Hundreds of Pulayas were using it during the time of the floods. The road runs by the side of the Mullakkal temple. The temple is facing the public road, though the temple building itself is at some distance from the road. On the northern side is a lane. I know that the sweepers and scavengers have been using that lane for sanitary purposes. There does not appear to be any objection so far as Alleppey is concerned. It is also a Sirkar temple. Passing on to Ambalapuzha, the position is the same as at Vaikom.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is worse.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): My friend tells me it is worse. If it is worse, a little more of exertion is required at the hands of my friend to get rid of it.

Coming on to the town of Trivandrum, in the Southern Street, there is an Amman Kovil bordering on the road itself. The *sanctum sanctorum* of the Amman Kovil would be only less than 10 feet from the road. Further west there is a temple—it is a private temple—opened by the Vaishnavites on the Southern Street itself. There is no outer enclosure; it opens straight into the road. In the northern part of the Fort, there is the Ramaswamy Kovil temple. That is also in the neighbourhood of the public road. That is also a public temple, I mean a temple controlled by the Sirkar. Naturally the question arises, what is this lack of uniformity due to? It was not a uniform principle that was being applied with reference to these different institutions. Apparently each temple had a constitution and a scheme of its own. That seems to be the underlying idea. If a question arises among Catholics as to whether a particular belief is a religious essential or is a religious non-essential, they do not settle it by taking votes of the members of the Parish, or of the Legislative Council; but the matter is referred to the Bishop. If he has got any doubt, the matter is referred to the Pope and the dictum of the Pope is conclusive and final.

MR. A. HOOGEWERF (*Nominated*): Is Mr. Krishna Aiyangar trying to draw a parallel between Catholic dogmas, and pollution and imaginary distances?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is nothing wrong. What Catholics consider to be

essentials are not so to other sections of the Christian community. The real test is sincerity of conviction. I say, the caste Hindus at Vaikam honestly believe that the question is not to be subjected to the process of cold logical reasoning in a legislative assembly. It is to be submitted for final decision to the head of the Hindu church.

MR. J. JOHN NIDIRY (*Changanachery cum Minachi*): Has Mr. Krishna Aiyangar heard of synods being held for such purpose by the Catholic Church?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Synods were held in the early centuries of the Christian era. One of the essential, cardinal doctrines of the Catholic Church is the infallibility of the Pope. They honestly believe that it is as much a matter of absolute religious faith as my belief in the existence of a God overhead. I do not question the wisdom of it. But the other Christians have been questioning it. They say that it is not essential to the Christian church. However, that is not a question that others should try to investigate and dispose of in the light of modern methods of reasoning. That is what I said. In these matters, if any body attempts to vindicate the doctrines of his faith on the broad foundation of reason, the chances are in 99 cases out of 100, everyone will feel that the wiser and safer and better course would be not to enquire into the reasonableness or otherwise of particular dogmas or particular observances. If a man wants to be the member of a particular church, he has to accept the doctrines laid down by the head of that church; he has to accept the interpretation of scripture as given by the exponents of the church. Similarly with respect to the other sections of the great eastern church—

MR. A. HOOGEWERF (*Nominated*): Is the Vaikam question a matter of dogma?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I thought I had said enough to convince my friend that that seems to be the opinion of an important section of the Hindu community. If my friend will not care to remember that, I am sorry, I cannot repeat what I said. If that is an honest faith of a particular section of the community, why not accept and give credit for the honesty of purpose, though, according to your judgment, it may be wrong. I am not here to support it. For the very best of reasons, I am not an authority to pronounce a verdict upon doctrines which a man regards as his article of faith. With reference to the great eastern church, the Church of Antioch, if any question of doubt arises, the matter is referred to the Patriarch of Antioch. The local Syrian Church has been in spiritual communion with it for centuries. On the other side of the Ghats, if a similar question arises among the followers of the great Sankaracharya, the matter is referred to him and his views are accepted and his followers submit to it. Naturally, the question might be asked, here is a party coming forward and telling us that it is a matter of religious faith with him, that the sanctity of his temple will suffer if a particular

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caste is admitted. I say do not scoff at it. Do not apply your standards of reason. I say get the question investigated by the Head of his church. Well, according to local tradition and belief His Highness the Maha Raja of Travancore who is the head of the State is the titular head of the Hindu religion also. Where institutions are functioning under a common head, then how came these differences—one touching the road, another some distance away from the road—prohibition in some cases, no prohibition in other cases? Are they not under the control of a common authority, maintained and supported by that authority? It appears to me, Sir, that, if we are to get at an intelligent explanation about it, the party to whom we have to go, in the first instance, must be the *tantri* of that particular temple.

Otherwise, if the *tantric sasras* lay down a definite rule of distance of pollution, that must have been followed uniformly with reference to other temples in the land. As I submitted a little while ago, it is observed in some places while it is not observed in others. Each *tantri* probably will be able to tell us the origin of that custom in that particular place. It means an investigation. There is no use laying down a simple rule of three that all these roads after a certain day will be thrown open to all the subjects of Her Highness the Maha Rani Regent. Some of our friends were saying that, during the time of Sir Raja-gopalachari, he put down orthodoxy, superstition and ignorance of that kind. Well, Sir, I do not attach any serious value to that argument. The present trouble was with us in his days also. That certainly is not an argument which can be advanced for serious acceptance. The sounder view will be, here is a large volume of opinion growing in strength, apparently well-founded. Enquire into the cause and provide the remedies. I shall not think very proudly of my Government if it acted like the Tsar of Russia who, when it was proposed to open a railway road, sent for a plan of the country, fixed two points and drew a straight line across, without caring to ascertain whether there were churches on the way, whether there were buildings which should be dismantled, whether there were mountains to be tunnelled, whether there were rivers to be bridged. An autocrat by temperament might relish that sort of appeal. But as a representative of the middle class, I cannot appreciate bureaucratic autocracy whether in the field of politics, in the field of religion or in matters social. I claim the privilege of submitting that the question is not to be dealt with in what is spoken of as the correct form. That way lies madness, not salvation, Sir. Inquire then into the history of each of these institutions. It may be possible, Sir, to persuade the *tantris* of most of these institutions to withdraw or modify the prohibition. In any event, the attention of the *tantri* may be drawn to the fact that the requirements of his *tantra sasra* will be satisfied by allowing a certain distance from the *sanctum sanctorum*. I respectfully submit that it is unjustifiable to allow a section of non-Hindus to use the roads while barring it against a section of the Hindus. I feel very strongly on the subject. While voting against the resolution, I feel very strongly against that. One method of getting rid of

what is regarded as a blow to their self-respect would be after consultation to evolve a scheme of increasing the distance from the central *garbagraham* to the walls where necessary and say all classes may go up to this whether they are Christians or Mahomedans or Ezhavas.

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanam-titta*): May I ask Mr. Krishna Aiyangar whether the present distance is not sufficient?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not know that. It was, therefore, I submitted, Sir, that this is a question which my friend and myself cannot dispose of. I am for directing an enquiry by the Government through the properly constituted channel. As I submitted, in questions relating to other religions, certainly my friends would not settle it by a vote of this House. But I am not so illogical as to ignore the value of the vote. If the question is pressed on the attention of the *tantri* and other ecclesiastical dignitaries, who may have to be consulted before any change is made, it may be possible to get a satisfactory solution. There may perhaps be a minority who may still oppose it. There may be some places where it may not be possible to have the roads opened. But their consolation will be that, in view of the general sympathetic attitude of the Government, it might be that our non-caste Hindus may recognise the difficulty of the Government and say "all right, we will exclude them from the category." The real grievance begins when you allow a man of one community to go and not allow another because it is his misfortune to be born in the religion to which I belong. The ancient law-giver who laid the broad foundations of the edifice of the Hindu religion, has not, so far as I have attempted to study the position, imported cast-iron rigidity into the system so that it should endure unchanged till the *pralaya* comes. Ancient *Dharmasastras* contemplate an adjustment suited to the growing requirements of the time, suited to the demands of time spirit. Is it not possible, if, under unavoidable circumstances, anything in the nature of a pollution occurs, that the orthodox mind will be satisfied by the performance of some purificatory rights—my friend may call it superstition or ignorance—I shall not misunderstand it? I merely say, Sir, orthodox sentiment may be respected; the rights of others may be recognised. It will be the duty of the Government, in the first instance, to call for a record of the temples in the land which are under the direct control of the Government or under the control of other institutions. Where anything in the nature of a prohibition exists, an investigation might be made by Government before any Proclamation is issued. I am anxious that Her Highness the Maha Rani Regent, as the head of Hindu religion in the State, should have all available materials and should have all legitimate advice. A committee of three, composed of a District Judge and two non-official gentlemen well-known for their integrity and culture, representing the two schools of thought, might be constituted to go and study on the spot the history of each institution so far as the records of the temple would help them to ascertain it, take evidence from the representatives of both parties and submit the

[Rao Bahadur K. A. Krishna Aiyangar.]

materials for examination by the Government. The views of the orthodox section, whether they belong to the *tantric* or *vaidic* section or laymen, might be ascertained; the Counsel might be allowed to appear to examine witnesses. A volume of materials will be gathered thus and it will be possible for the Government finally to dispose of the question in a manner satisfactory to all concerned. My Hindu friends, whatever their personal conviction be, where it is a matter of a mandate from their Sovereign, will not dare to question the propriety of it; they will bow loyally to it, in the same way as my Christian friends recognise the Sovereignty of their religious head. The Hindu Church in Travancore will do in exactly the same way as a Catholic may submit to a mandate from the Pope in Rome, in the same way as other sections of the country would submit to their ecclesiastical head. Hindus in Travancore will cheerfully submit. As I said, one condition essential is a calm atmosphere for that understanding.

MR. J. JOHN NIDIRY (*Changanacherry cum Minachil*): May I ask Mr. Krishna Aiyangar whether he would prefer the course just now suggested, that is to say, Government should make an enquiry, instead of leaving the aggrieved party to sue in a court of law?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): While dealing with the merits of the resolution I adopt only one course, *i. e.*, throw it out and ask the party to go to the civil court. After dealing with the merits of the resolution, I said, I will make a few observations which may not be pertinent to the resolution but which, I think, in view of the importance of the question that we are now discussing, might be of use. After all, Sir, the interests of the State do demand that this excitement, this estrangement should not be allowed to continue beyond a reasonable period necessary for the final solution of the controversy. When that is done, all must submit to it unless any section thinks that the Maha Raja of Travancore or the Maha Rani of Travancore is not the Head of the Hindu religion in the State—that Hinduism recognises no ecclesiastical head—that the question is to be disposed of by votes in the Legislative Council. I say then that it will be one of the saddest days in the history of Travancore and in the history of Hinduism. I do decline to give up my faith in my Hindu friends, orthodox and heterodox, to adjust themselves to altered surroundings. If that spirit of adjustability did not form an essential incident of Hindu religion, probably, Sir, Hinduism may not be a living religion to-day in the ancient land of India. Other Empires, other civilisations, other religions have had their day. They are heard of no more. It is only a memory. But Hinduism is still surviving because of its infinite capacity for assimilation and adjustment. That way lies the solution of the question. As I submitted, one condition for the solution is not to threaten us, not to frighten us, with the coming revolution, not to frighten us with the continuance of this incident at Vaikam—the policeman and the volunteer dodging one another. In our boyhood, Sir, in Trivandrum, we used to have a play

called *Kiliantattu*. One is trying to prevent the other from passing a particular line and the other by successful dodging crosses the line and escapes. That is the game that is being played now at Vaikam. It is interesting, it is exciting; but it is certainly unedifying. That should be put an end to. How is it to be put an end to? The public should recognise that the Government is really bent on getting a solution acceptable to all concerned. In a controversy, Sir, nobody gets sixteen annas in the rupee. Without the one terrifying the other with the threat of excommunication or mass violence on the score of principles, let each recognise that the other is also sincere and anxious for peace. I am sorry, Sir, I took up more of the time than I originally proposed to do. These are my views on the subject. But if I am called upon to answer the question before the House in the affirmative or in the negative, I have no choice but to vote against it.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir,—

MR. A. HOOGEWERF (*Nominated*): Sir—

PRESIDENT: Mr. Hoogewerf already wanted to ask questions. So he may put his questions now.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Mr. Hoogewerf first, Sir, because I said I would answer his questions.

MR. A. HOOGEWERF (*Nominated*): May I ask Mr. Krishna Aiyangar whether he took part in a huge Hindu conference at Alleppey presided over by Sir Sadasiva Aiyar, and where a resolution was passed in asking Government to remove untouchability and unapproachability?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I was present at the conference; I heard a good deal said about that subject. If my friend is only anxious to know whether very eminent Indians have not expressed their views against untouchability, I answer the question in the affirmative.

MR. A. HOOGEWERF (*Nominated*): Will Mr. Krishna Aiyangar place on the same basis articles of faith and customs—with regard to certain roads along which a man can pass through or not? [T.C.]

PRESIDENT: This is begging the question.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is not for me, Sir, to answer the question. I merely refer to a certain school of thought and so long as I claim respect for my views, I am bound to respect their views. When a man says it is a matter of faith, I do not argue. I say "all right".

MR. A. HOOGEWERF (*Nominated*): Does Mr. Krishna Aiyangar want to maintain that the question should be decided by a *tantri* or does he want to say that it should be decided by a civil court?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I have in my speech given categorically the answer

[President.]

and declared my position in detail. I said that the question should be decided by the highest tribunal in the land.

MR. A. HOOGEWERF (*Nominated*): By the *tantris*?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The civil court. That is the first answer to the question raised in the resolution. With reference to the solution that I was suggesting, I said that the Government and their House have nothing to do with it. Let the Sovereign give a mandate after enquiry. We will bow to it.

MR. A. HOOGEWERF (*Nominated*): Were the *tantris* of the temple at Vaikam consulted when the prohibitory boards were removed closer to the temple?

PRESIDENT: How do you expect Mr. Krishna Aiyangar to know that? I cannot allow that question.

MR. A. HOOGEWERF (*Nominated*): Mr. Krishna Aiyangar said that the *tantris* should be consulted.

PRESIDENT: What then?

MR. A. HOOGEWERF (*Nominated*): I want to know what he thinks. I asked Mr. Subba Aiyar and Mr. Krishna Aiyangar a question,—*i. e.*, whether a Pulaya convert who becomes a Christian to-day will be allowed to walk along the prohibited road tomorrow.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I thought the question was distinctly answered that he would not be. Mr. Subba Aiyar in support of his position drew the attention of the House to X, T. L. R., where a Salvation Army officer was accompanied by some Pulaya converts recently converted into Christianity and entered through a certain prohibited road, and the High Court held that they have no right to enter.

MR. A. HOOGEWERF (*Nominated*): How many years are wanted to purify that Pulaya or Paraya?

PRESIDENT: That is a hypothetical question; I cannot allow it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If that is the spirit in which the question is asked, I will say we are further off from the solution.

MR. A. HOOGEWERF (*Nominated*): Does Mr. Krishna Aiyangar want the Government to be neutral in this matter?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is not a matter that rests with me.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I wish to ask Mr. Krishna Aiyangar whether in his scheme of a committee it will be possible to associate the spiritual head of a non-caste *mutt* or temple.

PRESIDENT: What he mentioned was a mere suggestion.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I was thinking of a committee of enquiry of lawyers who would be able to collect materials as the result of an examination of records or examination of witnesses. The views of the religious head of a particular community may be ascertained. It will be perfectly relevant. I do not propose to include other members.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industry, North*): I wish to make a few observations as a matter of personal explanation.

PRESIDENT: You can make a personal explanation, but you cannot make observations, for you have already had your say.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industry, North*): Yes, personal explanation. Mr. Krishna Aiyangar said that in the course of my speech I attacked and insulted the Hindu religion and also the profession of lawyers, and also that I held out threats of violence and revolution if the resolution is not accepted by this House. I beg to say that, so far as I can judge, none of my phrases or sentences or ideas of my speech could be interpreted as conveying any of these sentiments.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is his argument, Sir. I am prepared to leave it to the House as our speeches are reported.

PRESIDENT: Mr. Mammen Mappillai, you can say that your remarks do not admit of that interpretation.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): When he spoke, his speech led me to form a different conclusion from what perhaps he intended.

PRESIDENT: You can say Mr. Mammen Mappillai, that your remarks do not admit of that interpretation; you are entitled to say that. But you cannot say that that was not what you said.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industry, North*): Am I entitled to make further explanatory remarks in support of my meaning?

PRESIDENT: You cannot discuss about that. You will be making a second speech then. That is not allowed by the rules. But you are entitled to say that you did not mean that. You cannot make observations on the point.

MR. P. PARAMESVARAN (*Nominated*): ഈ പ്രമേയത്തിൽ അടങ്ങിയിരിക്കുന്ന സംഗതി (എ) വയ്ക്കും അമ്പലത്തിനു ചുറ്റുമുള്ള റോഡുകളിൽ കൂടി ജാതിമതഭേദമെന്തിനെ ഏല്പാവകു നശിപ്പിക്കുന്നതിനു സ്വാതന്ത്ര്യം കൊടുക്കണമെന്നും (ബി) ഇതുപോലുള്ള മറ്റു കേന്ദ്രങ്ങളുടെ ചുറ്റുമുള്ള റോഡുകളിലും നശിപ്പാക്കുന്ന സ്വാതന്ത്ര്യം ലഭിക്കണമെന്നും ആകുന്നു.

[Mr. P. Paramesvaran.]

റോഡുകളിൽ സഞ്ചാരസ്വാതന്ത്ര്യം നൽകേണ്ടതു പ്രജകൾ എല്ലാവരെയും ഒന്നു പോലെ ഗണിക്കാൻ കടമപ്പെട്ടിരിക്കുന്നു. ഏതു പൂരിഷ്കൃതഗവർണ്മെന്റിന്റെയും കർത്തവ്യകർമ്മം ആകുന്നു.

ഏതു സമുദായത്തിൽ പെട്ട ജനങ്ങൾക്കു ഈ വിധസ്വാതന്ത്ര്യം ലഭിച്ചിട്ടില്ലാ എന്നു ഈ പ്രമേയകർത്താവു വാദിക്കുന്നുവോ ആ സമുദായക്കാർക്കു രക്ഷനൽകുന്നതിനു ജനങ്ങളുടെ പ്രതിനിധികളായ നാം എല്ലാപേരും കടമപ്പെട്ടവരാകുന്നു. ഈ വിധം രക്ഷനമ്മുടെ പൊന്നുതമ്പുരാൻ എല്ലാജനങ്ങൾക്കും നൽകിയിട്ടുണ്ടോ, അപേക്ഷിക്കപ്പെട്ടിരിക്കുന്ന വിധത്തിലുള്ള സ്വാതന്ത്ര്യം തിരുവിതാംകോട്ടിനു പുറമേയുള്ള രാജ്യങ്ങളിലുണ്ടോ, പബ്ലിക്കുറോഡുകളിൽ കൂടി സഞ്ചാരസ്വാതന്ത്ര്യം സകലവിധ ജനങ്ങളും ഈ നാട്ടിൽ എത്രത്തോളം അനുഭവിച്ചു വരുന്നുവോ, അത്രത്തോളം ആനുകൂല്യം തിരുവിതാംകോട്ടിനു പുറമേയുള്ള കൊച്ചി, മലബാർ മുതലായ രാജ്യങ്ങളിൽ ഇതിനൊത്ത അവിടത്തെ സമുദായങ്ങൾക്കു അനുഭവിക്കുന്നുണ്ടോ? ഈ ചോദ്യങ്ങളെ ഗാഢമായി ആലോചിക്കുന്നതായാൽ തിരുവിതാംകൂർ ഗവണ്മെന്റിൽ നിന്നും മറ്റു രണ്ടു ഗവർണ്മെന്റുകൾക്കും തമ്മിൽ ഉള്ള വ്യത്യാസം തുടർച്ചയായി വെളിപ്പെടുന്നതാണ്.

എല്ലാവിധപബ്ലിക്കുറോഡുകളിലും എല്ലാവിധപ്രജകൾക്കും തടവെന്നിയെ പ്രവേശിക്കാമെന്നും എല്ലാക്കച്ചേരികളിലും തടവെന്നിയെ ചെല്ലാമെന്നും ഉള്ള അനുഗ്രഹം ഈ നാട്ടുകാർക്കു ലഭിച്ചിട്ടു അനേകം കൊല്ലങ്ങൾ കഴിഞ്ഞിരിക്കുന്നു.

എല്ലാ പബ്ലിക്കുറോഡുകളിലും സഞ്ചരിക്കുന്നതായ ഗുണം നാം എല്ലാപേരും അനുഭവിച്ചു വരുന്നു. അങ്ങനെയിരിക്കെ പ്രമേയത്തിനു വിഷയമായ റോഡുകളിൽ സഞ്ചാരസ്വാതന്ത്ര്യം ഇല്ലായെന്നുള്ള കഥ എങ്ങനെ ജനിച്ചു? വൈയ്ക്കത്തുക്കുഴുത്തിലെ നാലു നടകളിലോടും ചെല്ലുന്നതായ റോഡുകളിൽ ഇന്നു ആളുകൾക്കു പ്രവേശിക്കാൻ പാടില്ലാ എന്നു നോട്ടീസുപലകകൾ പതിച്ചിട്ടുണ്ട്. ആ പലകകളെ എടുത്തുകളയണമെന്നും ആ പലകകളുടെ സ്ഥിതി ആത്മാഭിമാനമുള്ള സമുദായാംഗങ്ങൾക്കു അഭിമാനനാശകരമായിരിക്കുന്നു എന്നും അനേകം കൊല്ലമായി പ്രജാസഭയിലും മറ്റും എന്റെ സമുദായക്കാർ വാദിക്കാൻ തുടങ്ങി. അതിന്റെ ഫലമായി ആ പലകകളെ മുൻ സ്ഥാനങ്ങളിൽ നിന്നും മാറ്റി ക്ഷേത്രത്തിനു അടുപ്പിച്ചായി നിർത്തിയരിക്കുന്നു.

ഇപ്രകാരം നിശ്ചയിച്ചിരിക്കുന്ന രാജാജ്ഞയെ നമ്മുടെ ബഹുമാനപ്പെട്ട ഗവർണ്മെൻറു ജനങ്ങളുടെ അപേക്ഷയെ ആദരിച്ചും ജനങ്ങളുടെ ആഗ്രഹങ്ങളെ സാധിപ്പിക്കാനായും മാറേണ്ട കാലം വളരെ സമീപിച്ചിരിക്കുന്നു. എന്നാൽ ഗവർണ്മെൻറിൽനിന്നും ഇപ്രകാരം നിരോധനപലകകൾ നിർത്തിക്കൊള്ളുവാൻ കാരണം എന്ത് എന്നുള്ള പക്ഷത്തേയും ഈ അവസരത്തിൽ നമുക്കു ചിന്തിക്കാതിരിക്കാൻ പാടില്ല.

ഹിന്ദുദേവാലയങ്ങളുടെ ആചാരങ്ങളും അനുഷ്ഠാനങ്ങളും ഏവയാണെന്ന് വിധിക്കുന്നതിനോ അവയെ കാലോചിതമായി മാറ്റുന്നതിനോ ഉള്ള അധികാരം ഒരു ലെഗ്ലിക് ഗവർണ്മെൻറിനു ഉണ്ടായിരിക്കുന്നതല്ല. മതസംബന്ധമായ കാര്യങ്ങളിലാകട്ടെ നമ്മുടെ പൊന്നുതമ്പുരാനു പണ്ടുപണ്ടു വിശേഷാൽ അധികാരങ്ങളുണ്ട്. ഈ വിധം അധികാരങ്ങൾ ഇൻഡ്യയിൽ ഉള്ള മറ്റു രാജാക്കന്മാർക്കില്ല. പ്രത്യേകിച്ചും കേരളത്തിൽ ഹിന്ദുമതാചാരങ്ങളെ നിയമിക്കുന്നതു മഹാരാജാവുതന്നെയാകുന്നു. അതുകൊണ്ടു അവിടത്തെ കരുണകൊണ്ടുമാത്രം ഉദ്ദിഷ്ടസ്വപാതത്രയും നമുക്കു ലഭിക്കാൻ ഇടയുണ്ടാകാം. എന്നു വാദിക്കാൻ ന്യായമുണ്ട്. വാസ്തവസ്ഥിതിയാകട്ടെ, വൈദികകാര്യങ്ങളിലും മതകാര്യങ്ങളിലും മഹാരാജാവിനു സ്വപാതത്രയാധികാരമില്ല. കേരളത്തിൽ വൈദികാധിപത്യം നാശമായി ചില കുടുംബാംഗങ്ങൾ ഉണ്ട്. അവരുടെ ഉപദേശപ്രകാരം മാത്രമേ മഹാരാജാവു തിരുമനസ്സുകൊണ്ടും ഈ കാര്യങ്ങളിൽ പ്രവൃത്തിക്കു പതിവുള്ളൂ. ഈ നോട്ടീസു പലകകൾ പതിക്കാൻ ഇടയായ്ക്കൂ ഇത് നിമിത്തമായിരിക്കാം. എന്നാൽ വൈയക്തത്തെപ്പോലുള്ള മറ്റു അനേക ക്ഷേത്രങ്ങളുടെ ചുറ്റുമുള്ള റോഡുകളിൽ ഈവിധം നിരോധന പലകകൾ നിർത്തിയിട്ടില്ല. അതിനാൽ വൈയക്ത ക്ഷേത്രത്തിൽ കാണുന്നതെന്തൊ വിശേഷവിധിയായിരിക്കണം. അതിനെ ആദരിച്ചു പ്രവൃത്തിക്കുന്നതു തന്റെ കടമയാണെന്ന് വലിയതമ്പുരാൻ തിരുമനസ്സുകൊണ്ടു വിചാരിച്ചിരിക്കെ, സഞ്ചാരസ്വപാതത്രയും ലഭിക്കണമെന്നുള്ള അഭിലാഷത്തെ മുൻനിർത്തി രാജാജ്ഞയെ ലംഘിക്കുന്നതിനു തുനിയുന്നതു കാര്യസാധ്യത്തിനുള്ള ന്യായമായ മാർഗ്ഗമല്ല. വൈയക്ത ഇപ്പോൾ കഴിഞ്ഞ പത്തുമാസമായി നടന്നുവരുന്നതായ സത്യാഗ്രഹസമരമാകട്ടെ രാജാജ്ഞാലംഘനത്തിനുള്ള മറ്റൊരു പേരുമാത്രമേ ആകുന്നുള്ളൂ. ഈ സമരത്തെ ഇതേവരെ ഇടതവിധത്തിൽ പരിചരിച്ചുപോരുന്നതുനിമിത്തം രാജാജ്ഞയെ ഏവനും സഭയ്ക്കും ലംഘിക്കാമെന്നുള്ള ഭയവിചാരം ജനങ്ങളിൽ പിടികൂടിയിരിക്കുന്നു. ആ അഭിപ്രായത്തെ ജനങ്ങളുടെ മനസ്സിൽനിന്നു മാറ്റി സമാധാനത്തെ പരിപാലിക്കാൻ ഗവർണ്മെൻറു

[Mr. P. Paramesvaran.]

ന്റെ കടമപ്പെട്ടിരിക്കുന്നു. ഇതിലേയ്ക്കു എനിക്കുതോന്നുന്ന ഒരു നവ
 • ത്തിമാറ്റം ഇതാകുന്നു : എന്തെന്നാൽ വൈയ്ക്കം ക്ഷേത്രത്തിനു ചുറ്റുമുള്ള
 റോഡുകൾ ഒന്നുകിൽ പബ്ലിക്കുറോഡുകൾ, അല്ലെങ്കിൽ പബ്ലിക്കു
 റോഡുകൾ അല്ലാ. പബ്ലിക്കുറോഡുകളാണെന്നു ഗവർണ്മെൻറു വിചാ
 രിക്കുന്നപക്ഷം ആ വഴികളിൽകൂടി സഞ്ചാരസൗകര്യം എല്ലാവർക്കും
 ഉടനെ നൽകി ഇപ്പോഴത്തെ ക്ഷോഭത്തെ ഉടനെ ശമിപ്പിക്കണം. അ
 മവാ, ഈ വഴികൾ പബ്ലിക്കുറോഡുകൾ അല്ലായെന്നു ഗവർണ്മെൻറു വി
 ചാരിക്കുന്നപക്ഷം അതിനുള്ള കാരണങ്ങളേയും വസ്തുതകളേയും വിശദമാ
 യി വിവരിച്ചു ഒരു വിളംബരം പ്രസിദ്ധപ്പെടുത്തുകയും ഈ റോഡുകളി
 ൽകൂടി നടക്കണമെന്നു അപേക്ഷിക്കുന്ന ജനങ്ങളെ വിവരം ബോദ്ധ്യപ്പെ
 ടുത്തുകയും ചെയ്യണം. ഇവ പബ്ലിക്കുറോഡുകളാണെന്നവരകിൽ പഴയ
 തിരുവെഴുത്തു വിളംബരത്തെ അടിസ്ഥാനമാക്കി മേൽ പറഞ്ഞ നിരോ
 ധന പദ്ധതികളെ എടുത്തുകൊള്ളണം.

ഇന്നലെ മിസ്റ്റർ സുബ്ബയ്യർ അവർകൾ പറഞ്ഞതായ അഭിപ്രായ
 ത്തെ സശ്രദ്ധം മനസ്സിലാക്കിയതിൽ, ഈ പ്രമേയത്തിൽ ആവശ്യപ്പെ
 ട്ടിരിക്കുന്ന റോഡിൽകൂടി സഞ്ചാരസൗകര്യം അനുവദിക്കുന്നതിൽ വ
 ലുതായ തടസ്സം നേരിടും എന്ന ഭീതിജനിക്കുന്നു. പ്രസ്തുത റോഡു, അതാ
 വിതു, വൈയ്ക്കം ക്ഷേത്രത്തിനു ചുറ്റുമുള്ള റോഡും അതിലേക്കു പോകു
 ന്നതായ നാലുപ്രധാന റോഡുകളിൽ നിരോധനപ്പലക നിറുത്തിയിരിക്കുന്ന
 സ്ഥാനങ്ങളിൽ ക്ഷേത്രഗോപുരം വരെയുള്ള റോഡുകളും നകലവിധപ്ര
 ജകൾക്കും പ്രവേശിക്കാവുന്ന വിധത്തിൽ ഉള്ള രാജപാതയല്ലാ എന്നു
 അദ്ദേഹം സങ്കാരണം വാദിച്ചിരിക്കുന്നു. അതുകൊണ്ടു ആ വാദത്തെ
 തന്നെയാണ് ഗവർണ്മെൻറും അവലംബിക്കാൻ ഇടയുള്ളതു്. ഈ നി
 ലക്ക പബ്ലിക്കു ഹൈവെയല്ലാത്തതായ ഈ വിവാദ റോഡിൽകൂടി സ
 ഞ്ചരിക്കുന്നതിനു എന്റെ സമുദായത്തിൽപ്പെട്ട ജനങ്ങൾക്കു അനുവാ
 ദം തരുന്നതിനു ഗവർണ്മെൻറു വിസമ്മതിക്കാനേ വഴിയുള്ളൂ എന്നു
 ഞാൻ ആശങ്കിക്കുന്നു.

എന്തുതന്നെ ആയാലും ഒരു സംഗതി ഈ സഭയെ അറിയിക്കാൻ
 ഉണ്ടു്. കരുണാഗപ്പള്ളിക്കു തെക്കുള്ള എന്റെ സമുദായക്കാരെയാണു
 ഈഴവർ എന്നു മാത്രം സാധാരണമായി പ്രതിപാദിക്കാറുള്ളതു്. ആ
 ഈഴവജാതിക്കാർ തീണ്ടൽ ജാതിക്കാർ അല്ല. എന്റെ ദിക്കിലും സ
 മീപസ്ഥലങ്ങളിലും ഉള്ള നായർ സഹോദരന്മാർ ആരും തന്നെ ഞങ്ങ
 ളെ തീണ്ടൽ ജാതിക്കാരായി ഗണിക്കാറില്ലാ. ഞങ്ങൾക്കു തീണ്ടൽ ഇ

പ്ലാത്തുകൊണ്ടു തീണ്ടൽമാറികിട്ടേണ്ടതുണ്ടെന്നു അപേക്ഷിച്ചിട്ടുണ്ടല്ലോ. ആ വിധം തീണ്ടൽ ഇല്ലാത്ത ഞങ്ങളെക്കൂടി ഇപ്പോൾ തീണ്ടൽ ജാതിക്കാരായി ഗണിക്കാൻ ഇടയാക്കിയിരിക്കുന്നതു വലിയസങ്കടം ആണ്. ഈ വസ്തുതയെ, മാന്യ സോദരന്മാരെ, നിങ്ങൾ ധരിച്ചിരിക്കണം.

പ്രസ്തുത വെയ്പ്പും റോഡിൽ സഞ്ചാര സ്വാതന്ത്ര്യം ഞങ്ങൾക്കു സകലക്കും ലഭിക്കത്തന്നെ വേണം എന്നിരുന്നാലും ഈ വാദത്തെപ്പറ്റി എന്റെ വോട്ടു കൊടുക്കുന്നതിൽ വലുതായ മറ്റൊരു സംഗതിയെക്കുറിച്ചുള്ള ചിന്ത എന്നെ പ്രബലമായി ബാധിക്കുന്നു. ആ ചിന്തയെ ഈ മഹാസഭയിലെ അംഗവും ജനപ്രതിനിധിയുമായ ഓരോമഹാനും നല്ല പോലെ ആലോചിക്കണം എന്നു ഞാൻ അപേക്ഷിക്കുന്നു. ആ ചിന്തയെന്തെന്നാൽ എന്റെ മാന്യസ്റ്റേഫിതൻ മിസ്റ്റർ ഡാൻറിയലിന്റെ പ്രസംഗത്തിൽ ഓരോകാലത്തും നാടുവാണിരുന്ന നമ്മുടെ പൊന്നുതമ്പുരാക്കൻമാർ പ്രജകളുടെ അഭിലാഷത്തെ അറിഞ്ഞു ആ അഭിലാഷങ്ങളെ കൃമുകൃമമായും കാലാനുസരണമായും സാധിച്ചുകൊടുത്തിരിക്കുന്നു എന്നു പ്രസ്താവിച്ചു. പ്രജാസഭ, നഗരസഭകൾ മുതലായവയിൽ സകലജാതിക്കാരായും പ്രതിനിധികളെ മെമ്പറാക്കിയിരിക്കുന്നു. എല്ലാസ്കൂളുകളും ഏഴെട്ടെണ്ണം ഒഴിച്ചു സകലജാതിക്കാർക്കും പ്രവേശിക്കാവുന്നവയാക്കിയിരിക്കുന്നു. ഈ വിധം അനുകൂലങ്ങളിൽ ഓരോന്നും നാം ന്യായമായവിധത്തിൽ അപേക്ഷിച്ചു വാദിച്ചു ലഭിച്ചുവെന്ന്. നമ്മുടെ പൊന്നുതമ്പുരാക്കൻമാർ നാം ആവശ്യപ്പെടാതെ സ്വയമേവ തന്നതായ അനുകൂലങ്ങളും ചിലതൊക്കെയുണ്ട്. ഇങ്ങനെ പടിപ്പടിയിായി നമുക്കു അനുകൂലങ്ങൾ തന്നു നമ്മേ അനുഗ്രഹിച്ചുപോരുന്ന മഹാരാജാക്കന്മാരും ഗവണ്മെന്റും നാം ഇപ്പോൾ ആഗ്രഹിക്കുന്ന സഞ്ചാര സ്വാതന്ത്ര്യം നൽകുന്നതിനു മടിക്കുന്നവരായിരിക്കും എന്നു ഞാൻ തീരെ വിശ്വസിക്കുന്നില്ല. തീണ്ടൽ ജാതിക്കെല്ലാം സഞ്ചാരസ്വാതന്ത്ര്യം നൽകേണ്ടതാണെന്നു സവർണ്ണഹിന്ദുക്കൾ ആയ അനേകം മാന്യന്മാർ ഈ സഭയിൽതന്നെ വാദിച്ചിരിക്കുന്നു. ഒരു സവർണ്ണജാതി-കാൽനടയായി നടന്നുവരുന്നതായ തപസ്യചെയ്ത നമുക്കു ഈ അനുഗ്രഹം നൽകണം എന്നു മഹാറാണി റീജൻറു തിരുമനസ്സിനോടു അപേക്ഷിച്ച് നിയമസഭയുടെ തയ്യയെ അടിസ്ഥാനപ്പെടുത്തി ഈ വിഷയത്തെ തീരുമാനിക്കാമെന്നല്ലയോ കരുണാനിധി അരുളിച്ചെയ്തിരിക്കുന്നത്. ആ തിരുമേനി രാജഭാരം കയ്യേറ്റിട്ടു അധികംകാലം ആയിട്ടില്ല. പുരാതനചാരങ്ങളെ ചുവടേറിച്ചു സ്വധീരം പ്രവൃത്തിക്കുന്നതിനുള്ള ശക്തി അവർക്കു സഹജമായുണ്ടായിരുന്നാലും അനേകംവീധം കാരണങ്ങളാൽ പ്രത്യേകിച്ചു വൈദികകാര്യങ്ങളിലും മത

[Mr. P. Paramesvaran.]

കാൽപ്പങ്ങളിലുള്ള 'ദൃഢപ്രതിപത്തിനിമിത്തം ആ വിധം മാറ്റം ചെയ്യാൻ നമ്മുടെ തിരുമേനിക്ക് ഉടൻടി ചെയ്യേണ്ടതാകാം എന്നു ഞാൻ വിചാരിക്കുന്നില്ല. വൈദികകാൽപ്പങ്ങളേയും ക്ഷേത്രാചാരങ്ങളേയും യാതൊരുക്കാരും കൂടാതെ പരിപാലിക്കുവാൻ ആ തിരുമേനി സ്വന്തം കടമപ്പെട്ടു ഇരിക്കുന്നു. ഈ സ്ഥിതിക്കു ഈ കൌൺസിൽ അത്യന്തം ഗാഢമായി ആലോചിക്കേണ്ട വിഷയം ഈ കൌൺസിലിലെ തീർച്ചനിമിത്തം അവിടത്തേക്കു ധർമ്മസങ്കടം ഉണ്ടാകാതിരിക്കണം എന്നുള്ള വസ്തുതയാണ്. നമ്മുടെ തീർച്ചയെ അപ്രകാരം രൂപീകരിക്കേണ്ടതു ഓരോമാനുഷമംബര്യത്തോടുകൂടിയതായാണെന്നു നിങ്ങൾ ഉണർന്നു. പ്രജകളുടെ അപേക്ഷയെ ഗവണ്മെൻറു നല്ലപോലെ മനസ്സിലാക്കിയിരിക്കുന്ന സ്ഥിതിക്കു സ്വല്പം കാലം നാം ക്ഷമയോടുകൂടി പാക്കാം. അവിടുന്ന് സ്വയമേവ ഈ അനുഗ്രഹം കല്പിച്ചതെന്നതിനുള്ള മനോഭാവം വർദ്ധിച്ചതിൽ പിന്നീട് അതു ലഭിക്കുന്നതു അധികം പക്ഷമായ ഫലം തിന്നുന്നതുപോലെ രുചികരമായിരിക്കും. ഇതാകുന്നു എന്റെ അഭിപ്രായം. എന്നുതന്നെയുമല്ല, ഈ സഞ്ചാരസാമന്ത്രിയുടെ ആവശ്യകത ഈ സമയമായതിൽ പെട്ട ഞങ്ങൾക്കുമാത്രം അല്ല അവർണ്ണാഹിന്ദു വർഗ്ഗങ്ങൾ എന്നു വിളിച്ചുവരുന്ന എല്ലാ സമുദായക്കാർക്കും ഇതു ആവശ്യമായിരിക്കുന്നു. ഈ കാൽപ്പനേടാനായി അവർണ്ണാഹിന്ദുക്കളിൽ ചിലരും അവരിൽ അനേകന്മാരോ നിയിട്ടുള്ള സവർണ്ണരായ അനേകം മാന്യന്മാരും കഴിഞ്ഞ പത്തുമാസക്കാലമായി ചെയ്തുവരുന്ന പ്രവൃത്തിയെപ്പറ്റിയും ഒരു വാക്കുവേണ്ടി പറയാനുണ്ട്. ആ പ്രവൃത്തി ഞാൻ മുൻപ്രസ്താവിച്ച സത്യഗ്രഹസമരമാണ്. ആ സമരം നിമിത്തം അനേകം ജനങ്ങൾ സംകടം അനുഭവിച്ചുവരുന്നു. ഗവണ്മെൻറു ആജ്ഞയെ ധിക്കാരമായി അവഗണിച്ചു മറിപ്പിക്കുന്നതായ ഈ പ്രവൃത്തിയെ ഈ സമയമായാണെന്നു ധനം കൊണ്ടും ജനം കൊണ്ടും സഹായിച്ചു മുഷ്ട് കാണിക്കുന്നതെന്നുള്ള മഹാപരാധം എന്റെ സമുദായത്തിൽ പെട്ടവർക്കു ജനങ്ങളുടേയും പേരിൽ ചുമത്താൻ ഇടയായിരിക്കുന്നു. തന്നിമിത്തം ഉള്ള സങ്കടം എന്നെ അധികമായി ബാധിക്കുന്നുണ്ട്. ഈ അപരാധം ചുമത്തലിനുള്ള കാരണങ്ങൾ നേരായും നേതൃക്കേടായും ഇല്ലാതിരുന്നെന്ന് വരികിൽ നമ്മുടെ അപേക്ഷക്കു അനുകൂലമായ ഉത്തരവു ഉടൻടി ഉണ്ടാകുവാൻ ഇടയുണ്ടായിരിക്കും എന്നാണു എന്റെ വിശ്വാസം. ഈരണ്ടു മഹത്തായ കാരണങ്ങളേയും ഞാൻ നല്ലപോലെ സ്വയമേവ ചിന്തിച്ചു നോക്കിയതിനേൽ ആകുന്നു എന്റെ വോട്ടിന്റെ ചായ്വിനെ ഞാൻ സ്ഥിരപ്പെടുത്തിയിരിക്കുന്നത് എന്നുള്ള യഥാർത്ഥം

തേയും ഈ അവസരത്തിൽ ഈ മഹാസഭയെ അറിയിച്ചുകൊള്ളുന്നു. നമ്മുടെ സങ്കടങ്ങൾമുഴുവനേയും ഗവണ്മെൻറ് ധരിച്ചിരിക്കുന്നു. സങ്കടനിവൃത്തിവരുത്തിത്തരും എന്നു നമുക്കു പൂർണ്ണമായിവിശ്വസിക്കാം. ഈ സ്ഥിതിക്ക് എന്റെ മാന്യസ്നേഹിതൻ മിസ്റ്റർ കുമാരൻ പ്രമേയത്തെ ഈ അവസരത്തിൽ പിൻവലിക്കുന്നതു സമുദായോൽകഷ്ഠത്തിനു ഉചിതമായിരിക്കുമെന്ന് ഞാൻ വിശ്വസിക്കുന്നതിനാൽ അദ്ദേഹം അപ്രകാരം ചെയ്യണമെന്ന് അദ്ദേഹത്തോടു പ്രത്യേകം അപേക്ഷിക്കുന്നു.

KHAN SAHIB M. K. KHADIR PILLAI (*Nominated*): Sir, I never wanted to speak on the resolution. But on hearing the eloquent and learned speeches made for and against the resolution, I feel that I should also speak a few words.

I, as true follower of Islam, believe in the equality of all religions. I do not at all believe in difference between man and man. However much I may wish to see the above principles carried out in our daily lives, yet there are one or two considerations which should outweigh such pious hopes.

As a Mahomedan, I feel my position rather delicate, in being called upon to legislate about questions pertaining to other religions.

It is distinctly a subject on which I cannot be expected to say much. It is essentially a question to be settled by Hindus themselves. But, as an outsider, what strikes me most is that the attempt to move this resolution in this Council is, in my humble opinion, a little mis-conceived and out of place.

Considering the subject the resolution deals with, I am sorry I cannot congratulate the Government on its accepting the same to be moved in this Council. I should have thought that persons who are responsible for ushering in this resolution would have first sought their remedy before the highest judicial tribunal of this land. Either way the resolution is an unhappy one. I know that my Hindu brothers here are almost equally divided in this matter. If this House pass this resolution, while pleasing one set of Hindus, we displease the other, and *vice versa* if we do not pass this resolution. The position of this House is not an enviable one.

I am a staunch believer in observing perfect equality between man and man, whatever the denomination may be. But one has to stop short at settled customs observed for a long period of years. I am constitutionally against violent changes. Let us do things systematically and methodically. Let us have these reforms in small doses. Let us get used to them as we have got used to many things. I fully sympathise with the mover and all that he asks for. But human nature being what it is, and knowing my country-men well, I would earnestly appeal to my learned friend Mr. N. Kumaran to withdraw the resolution at present, leaving it to our Most Gracious Maha Rani Regent, to do what is best in the circumstances, with a fervent prayer that Her Highness will find ways and means by which the several differences which exist may be speedily smoothened into a harmonious whole.

[Mr. N. Kumaran.]

MR. N. KUMARAN (*Nominated*): Sir, as I submitted at the outset, the subject was discussed at a length which was even beyond my expectation. We have spent almost three days over this very important resolution, we have discussed the resolution from all its standpoints, and have travelled not only over the entire ground but have gone much beyond its regular province. We have gone to Christianity, we have gone to Sankarachariya, we have gone to so many other subjects, and we are now in a position to come to a conclusion and vote one way or the other. I would make a few remarks in reply, in spite of the fact that the question was discussed at great length by all the members of the Council except one or two.

Mr. Subba Aiyar began his argument in opposition to the resolution by remarking that the person who brought the motion or the persons who prompted him to bring the motion had some other motive beyond what was clearly visible on the surface. If Mr. Subba Aiyar was a little careful, he would have seen from my speech that I distinctly dissociated this question from temple entry. I did not imply by any statement that I made that the object at the back of my mind was to achieve temple entry. I had distinctly stated and this House will remember from the quotation from my speech pointed out by Mr. Velu Pillai, that I raised the question of temple entry on a different occasion and from a different standpoint altogether. The question of temple entry is essentially a question of religion. But this question now before the House is a question essentially of civic right. Therefore, my friend Mr. Subba Aiyar was doing me a clear injustice by making this inference that I had at the back of my mind the idea of forcing or bringing to the consideration of this Assembly this question of temple entry. Further, if my friend had studied the history of this question he would have found that we had been agitating over this matter from the very beginning of the Popular Assembly. Year after year this subject was brought before the Assembly. Even the very existence of these prohibition boards was most probably for the first time brought to the notice of Government by the Ezhava members of the Assembly. Year after year this question was pressed on the attention of Government. Receiving very unsatisfactory replies the subject was being repeated. No doubt, the starting of the *satyagraha* at Vaikam had something to do with the tabling of this resolution. Of course, any one can say that owing to the starting of *satyagraha* and consequent upon the prohibitory order passed by the Government an excitement was created, and we thought it was desirable that the subject should be brought before the Legislative Council and some decision should be arrived at. The *satyagraha* was started on the 17th of Meenam and this question came up for discussion only in the last sitting of the Council. The subject was before the Government for more than 7 or 8 months before such a resolution came up for discussion in the House. During all this time, Government was not able to do

anything in the matter. There was a *savarna jatha*; there was a deputation of Ezhavas as well as members of the Nayar Samajam who waited upon the Dewan and pressed this question for a solution. In spite of all these, nothing has been done. Therefore, in order to relieve this situation and not for the purpose of establishing the question of temple entry this resolution was tabled and I pressed it for the consideration of this House. I, therefore, believe that Mr. Subba Aiyar would have understood all these facts from my speech as well as from the other records at his disposal and would have spared me this insinuation that I was forcing this question on the attention of the House, that is, the question of temple entry.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I never said so. What I said was that it is so intimately connected with temple entry that this resolution is taken as a first step.

MR. N. KUMARAN (*Nominated*): In view of the interruption—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is not an interruption; it is only an explanation.

MR. N. KUMARAN (*Nominated*): I would submit that there are any number of temples in the Travancore State by the side of which there are public roads through which all classes of people pass. If the question of temple entry was our object, there was absolutely no necessity for going to Vaikam. There are ever so many important temples in regard to which the question of temple entry may be raised in this Hall. The very fact that it was very distinctly said that all persons who had taken part even in the *satyagraha* at Vaikam stated that the object of the *satyagraha* movement was not any religious question but only the right of passing through those public roads would have made the object clear and therefore there would be no room for doubt.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Did not the joint conference of Nayers and Ezhavas pass resolutions one of which referred to temple entry?

MR. N. KUMARAN (*Nominated*): As a matter of fact such resolutions were being passed for the last eight or nine years. That does not at all alter the situation. Three or four years ago in a Nayar Samajam which met at Ambalapuzha a resolution was passed advocating temple entry for all classes of people and in the next year Mr. Mannathu Padmanabha Pillai, a member of the Popular Assembly, discussed it in the Popular Assembly. Therefore, year after year, the same resolution is being passed in all these conferences. It did not come up for the first time in the last Nayar Samajam and, therefore, no argument can be built upon that circumstance.

Mr. Subba Aiyar's first argument against the granting of this favour was that the road in question was not a public road, and therefore is not a road through which all classes of people in Travancore can claim the right of passing, and he relied upon the ruling in V T. L. R. to maintain his position. Almost all the speakers on this side of the House dwelt upon this ruling and commented upon it. Some said that

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it supported the position advanced by Mr. Subba Aiyar and others said that it did not do so. Now, Mr. Changanachery Paramesvaran Pillai made it perfectly clear that the ruling in V T. L.R. did not apply to the facts of the present case, that it did not go to that length to which Mr. Subba Aiyar said that it has gone. All that it laid down was that there were two classes of public roads in Travancore, viz., King's highway which all classes of people can use for all legitimate purposes, and another class which all classes of people can make use of only for some purposes. That is the only point that was laid down in that case. This ruling was passed upon the notification issued by Government in Karkatakam 1040. That ruling said that all public roads are open to all classes of people. When the question arose in that case whether all public roads can be made use of for all purposes by all classes of people, the High Court ruled that in respect of some roads some classes of people are not entitled to make use of them for all practical purposes which some other communities are entitled to. That is to say, the ruling was this: all public roads in Travancore cannot be made use of by all classes of people for all legitimate purposes. It did not lay down that there are some public roads to which some classes of people are not admissible for any purpose. The facts of the case would make the point clear. The road in question was used by both Christians and Jews. The Jews claimed that the road had been specially in the use of that community and that they alone were entitled to take processions through the road. The point in dispute was whether the Christians could take a procession through that road. The decision was that even though Christians could make use of it, they could not carry a religious procession there. Therefore, if my friend wants to maintain that the so-called *avarna* communities are not entitled to make use of these roads in question for all purposes, I entirely agree with him. This ruling does not help him to the extent of saying that any section of the public in Travancore is not entitled to enter this road even for purposes of walking. There is no ruling of that kind laid down by the High Court and, therefore, my friend should not have relied upon V T. L. R. for the position that these roads are not open to all classes of people. (Mr. A. Hoogewerf: *Hear, hear.*) Of course various members who referred to the ruling read portions of the judgment. Now the only point that was in dispute in that case was this:

"The question involved in these appeals being one of some importance, we reserved judgment for the purpose of consulting authorities and considering what rule should be applied in such cases. The law recognises three kinds of ways: private ways, common ways and public highways, otherwise called the king's highways."

And then,

"We have therefore to see whether the street falls under the category of king's highway and is open to all men and for all purposes, or of common way which may be used by all men but not for all purposes."

That is the only point that was decided in that case. That is to say, that decision held only that that road was not available to the

Christians for the purpose of taking a religious procession. The latest decision of the High Court in which this ruling was applied was in the well-known Myladi case which was disposed of only about three years ago. There also the dispute was with respect to a street and the taking of a procession along that. On either side of the road in Myladi Vellalas and Nadars were living. The Vellalas said that the Nadars could not take a procession. The Nadars were for all practical purposes making use of the same road. When the question of taking a procession through that particular road came up, the Vellalas said that the Nadars were not entitled to take a procession. And the High Court decided on the authority of V T. L. R. 93 that they were not entitled to do so. These facts would clearly show that the ruling in V T. L. R. does not help my friend and does not go to the extent of saying that the roads round the Vaikam temple could not be made use of by some classes for any of the purposes. If there is any ruling to that extent, I challenge my friend to quote it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): V T. L. R. itself.

MR. N. KUMARAN (*Nominated*): V T. L. R. itself? Certainly the facts mentioned therein will not enable my friend to say—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I ask Mr. Kumaran whether in the first portion of the second point referred to there is a distinction between a public way or a common way? Are not the points which distinguish between the two decided in that judgment?

MR. N. KUMARAN (*Nominated*): Yes, I accept that.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): What are those points?

MR. N. KUMARAN (*Nominated*): The main point decided in that case was that in regard to the king's highways all classes of people can make use of them for all legitimate purposes.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Does it not say that it may be restricted to a section of the public, or if allowed to be used by the whole public restricted for certain purposes for a section.

MR. N. KUMARAN (*Nominated*): I do not understand my friend. There are two classes of roads, one class of roads called king's highways made use of for all legitimate purposes by all classes of people and the other class of roads made use of only for some purposes by all classes of people. That is all the point that was laid down in that case. Further, it was not necessary for the purpose of that decision to decide anything more than what I submitted. Of course, Mr. Subba Aiyar knows that when a court records a finding in a case which finding is not absolutely necessary for the disposal of the case, that finding is not binding upon the parties themselves and certainly it is not binding upon any other party to any other suit. That is the law of *res judicata*. Therefore if any other matter has been made mention of in that case, certainly it will not bind even the parties to that litigation and there is

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no force in the contention that it should bind other parties also who are strangers to that suit. Therefore, the law as it now stands is, so far as the public roads are concerned, the Government notification made by the Sirkar in Karkatakam, 1040. According to that notification which is considered by the High Court as the law on the point, we are entitled to travel in all public roads, and if any section of the people or even if the Sirkar is going to say that we should not make use of this road for some particular purpose or any purpose, the burden of proof is upon that party and they will have to go to a court of law and establish that we are not entitled to make use of this road even for purposes of walking. Now, Sir, the Vaikam road may be a king's highway or a common way. If it is king's highway, certainly every section of the people must be permitted to walk along it. I maintain that if it is a common way, it is also a public road. But when they said that all classes of people are not entitled to make use of that road for all legitimate purposes, it does not follow that we cannot be permitted to walk through that road. Probably if the Christians wanted to take a procession or if the Mahomedans wanted to take a procession along this road, the Hindu community might object. Similarly, an objection might be raised by the caste Hindus against a procession that might be taken by non-caste-Hindus and then the ruling in V T. L. R. might apply. But, for the prohibition of walking, I submit, that has absolutely no foundation in the V T. L. R. case, that any community should be prohibited even from the *gramaveethi* class of roads.

Mr. Subba Aiyar based another objection on the ground that this road is within *sanketham* limits, that it is not Sirkar land and therefore whatever classes of people may be permitted to walk; it is not all communities that are entitled to claim any right over these roads. I submit, in the first place, it is not open to the Law Member to say that this road does not lie through Sirkar land. This point has been dealt with at great length by many of the previous speakers and I do not want to take up the time of the Council by referring to any of those arguments. The Royal Proclamation is the last word and almost the final word on the subject and it is not open to my friend even representing Government in this Council to say that the Government is in the position of only a trustee in respect of these temples and not of a Sovereign proprietor. Of course, it is easy for the Government to declare that Mr. Subba Aiyar was not entitled to say that these roads are Sirkar roads or these Devaswoms are not Sirkar Devaswoms in which Government have absolute right. Whatever the Law Member might say in this Council will not bind Government and in a court of law it is very easy for Government to say that a Proclamation cannot be over-ridden by even the statement of the Law Member in the Legislative Council. So, the position as I take it, is that so far as *porambokes* or Sirkar temples or the lands attached to Sirkar temples are concerned, all those Devaswom lands and *porambokes* are within the purview of the Proclamation and are at the

absolute disposal of Government and, therefore, any road that is opened or lies through such land is certainly a public road and, therefore, the objection raised by my learned friend is not tenable.

Another point that I would mention in this connection is that, even supposing that this road lies within *sanketham* limits, that this property has not absolutely vested in the Sirkar, but that the Vaikam deity is the owner of the property, I nevertheless contend that it is open to the public to acquire a right of way over such land because the law is clear that it is not necessary for the public to obtain a right of passage, that they should have an absolute right over the land or that it should belong to the Sirkar.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know from Mr. Kumaran in what way that may be acquired?

MR. N. KUMARAN (*Nominated*): By dedication. It is clear law even in Travancore that by dedication a private owner can permit or can create a right of passage for the public over his own land. In this case it is clear that for centuries together the public have been making use of this road. Whatever may be the class of people who were permitted to pass through this road, it cannot be denied that the public have been making use of this road and the Devaswom cannot now say that the public have not acquired a right of passage through it. Therefore, the ownership of the land is perfectly immaterial. There is clear evidence to show that there is a right of passage for the public whatever may be the nature of that public, and therefore, it is almost an indefeasible title and the question whether it belongs to the Devaswom or to the Sirkar has absolutely no bearing on the point.

Another objection raised by Mr. Subba Aiyar was that this way does not lead to any public place, that these roads are intended only to enter the temple and therefore it is not in virtue of any necessity that this claim is made by the *avarna* communities. I dare say the lie direct to the statement can be given by the very fact that the Christians and Mahomedans who have absolutely nothing to do with the Vaikam temple—and I do not believe that they have a desire to enter these temples and worship—make use of these roads. I should like to know for what purpose these communities are making use of this road, unless it is for some purpose for which ordinarily roads are used by all classes of people. Therefore, it cannot be said that these roads serve only the purpose of permitting the people to enter the temple. I have seen some portions of this road. I have seen that there are a number of shops along these roads, and all sorts of people go to the place for the purpose of purchasing and selling things. I also stated in my previous speech that these roads form part of public roads, roads which are declared to be public and through which all classes of people can pass. It is very difficult to imagine that the utility of a road stops at a particular point on the ground and does not extend beyond it but continues after some break in the middle. A person who travels through one part of the road will have to stop there. My friend probably wants us to believe that the necessity of his journey stops there and that it

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begins again beyond that portion of the road which is objected to. I therefore submit that there is no point in the contention that this road does not lead to any public place. In fact one portion of the road leads to the Vaikam jetty, and the public offices—the Munsiff's Court and the Police Cutcherry. If any person wants to go from the eastern side of the temple to the western side where all these public offices are situate, he will have to take a very circuitous route through some by-ways and impassable and difficult lanes to reach these offices. On the other hand, persons who are permitted to walk through these roads from the east to the west will go to the Munsiff's Court and to the Police Office in probably one-fifth of the time. I therefore say that it is absolutely necessary for the amenities of these prohibited communities that these roads also are thrown open, not certainly for the purpose of entering the Vaikam temple and worshipping—the Christians and Mahomedans are not doing that—but for the purpose of their business in life. My friend said that it does not lead to any place and therefore cannot be considered to be a public road and therefore cannot be also necessary for the convenience of the *avarna* community. I have already submitted that there are a number of shops on all the approach roads and I see no reason why these prohibited communities should not be permitted to go there and have their purchases and sales. Further, according to the Markets Regulation which came into force only in the latter half of this Malabar Century, my friend's contention that there are no public markets—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know the Dictionary meaning of the word 'market'.

MR. N. KUMARAN (*Nominated*): Market is a place where people congregate for selling and purchasing things. I believe my friend will accept the definition. I do not mean to say that it is a cattle market or some other market.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If he refers to a dictionary he will find the word 'periodical' also.

MR. N. KUMARAN (*Nominated*): If it is then periodically, I submit the force is greater and the necessity for going to these places is even greater. I therefore submit that the existence of a market according to the Markets Regulation is not—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know whether certain communities are prohibited from resorting to these shops?

MR. N. KUMARAN (*Nominated*): They cannot take their things there. Probably if they are allowed, they may get things cheaper and sell their things at a higher price. These are all amenities which are denied to them because there is a pollution board and the District Magistrate has issued an order under Section 127.

Now another contention urged by the Law Member and other speakers who opposed this resolution was that these people were not

using these roads and hence they cannot be said that they are in any way entitled to make use of the same. I take it for the purpose of argument that these people were not making use of these roads before. I have submitted, of course my friend referred to it, in my speech that in some parts of these roads Ezhavas had admission. Even now I would submit that, in some parts of the road, Ezhavas go and those persons who are in charge of the Kalakkal temple which is situated on the north-western corner of the main temple hold communication with the people in the Vaikam temple. The people pass through certain lanes and then enter into the road and they hold communication with people from the temple and take things from there. There is absolutely no pollution. But they are not permitted to travel up and down the road. That goes to show that the people were making use of the road. I mention these circumstances not only for the purpose of showing that there was no such thing as prohibition in the past. Probably they might have been making use of the road before and might have been prevented from making use of the same on account of the fact that they could not resist the opposition put forward by the caste-Hindus. Anyhow, there is no clear evidence to show that they made use of these roads for walking. If they had protested, of course, there might have been something on record. Apart from that, let us grant that they were not making use of that road before. I submit that it should not be a reason why they should not be permitted to make use of that road now. Coming to the decision in V T. L. R., I find that it does not go to the extent of saying that all classes of people cannot walk through all classes of roads in Travancore. It only says that some classes of people cannot make use of them for all purposes; Walking is a most elementary act for which the road is made use of. Sir, all roads in Travancore are maintained by the Sirkar and as such are public roads, but the decision in V T. L. R. divided roads into 2 classes—king's highways and common ways. I submit, Sir, that all classes of roads are public roads and therefore for some purpose or other these roads are available for all classes of people.

There is another proposition which I should like to advance, and that is, this is a civic right and it cannot be lost by non-user. It may be that a civic right was not used by some classes of people or by a particular individual. That is not an argument for saying that you have lost your right. The mere fact that you belong to this State, and that you owe allegiance to the sovereign is a sufficient guarantee that you are entitled to make use of the civic rights. Therefore even though for argument's sake we may be considered to be persons who were not making use of the road before, it cannot be said that it would be a bar for the subsequent usage of these roads, by these prohibited classes.

Arguments have been advanced by Mr. Subba Aiyar as well as by other speakers who spoke against the resolution that this is not a subject which can properly be discussed by the Legislative Council, as there is the question of fact involved in the disposal of this matter and they were of opinion that it could be disposed of only by courts of law.

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My reply to this argument is this. The functions of this Council are very weighty indeed. For the purpose of disposing of a question of fact the ordinary procedure would be by litigating in a court of law. But every matter that comes before the Council can be disposed of only by considerations of fact. If all considerations of fact are to be delegated to the courts of justice and if this Council is to wait until the facts are disposed of by them, I submit, that no business can be transacted here. Every proposition that we lay down involves the consideration of a number of facts. These facts may be disputed by the one side and may be asserted by the other side. If in all these cases we are asked to go to a court of law and finally get a decree as to the question of facts, I believe, that it is a counsel of perfection which under ordinary circumstances we will not be able to follow. Sir, our Legislative Council and also other Councils have been taking cognizance of questions of this kind we are disposing. There is therefore no reason why we should delegate our powers to the civil court and sit quiet here until a disposal is effected by it. The convenience of the people and the affairs of the State will not wait till these decisions are obtained from courts of law. Therefore I submit that it is a general proposition which cannot be accepted. The question has been raised that this is a matter which has to be disposed of by a court of law and it is therefore not proper for this Council to sit in judgment upon facts which are already disposed of by a Criminal Court. I submit that this argument is not correct. No doubt the prohibitory order under Section 127 has been issued by the District Magistrate of Kottayam and that order has been made permanent by the Government publishing it in the *Government Gazette*. Now there are two remedies in a question of this kind. Government can, by a notification, withdraw that order or parties who object to the notification can go to a court of law to litigate upon it. I think that it is not right to compel a party who is aggrieved to go to a court of law and obtain a remedy. It is perfectly open to him to approach the Sovereign, the legislature, as well as the Government and get a remedy. Therefore it is certainly not correct to say that a remedy lies in a civil court only. It is open to this Council to make a recommendation to Government and it is perfectly within the province of Government to publish a notification stating whether the road is a public road through which all classes of people can walk or it is not a road open to all classes. Mr. Krishna Aiyangar said that the reason why the parties have not gone to a court of law might be the fact that they cannot find funds for prosecuting the case or they feared to go to a court of law thinking they would lose their case. Whatever might be the reason, I am not going to answer these two observations. Whatever might be the causes for not seeking a remedy elsewhere, I think that, if relief is granted by this Council, certainly there will be no harm. Supposing that relief is not granted and the claim of *avaras* is not admitted by the court, it is open to *avaras* to come before this Council and thereby secure a recommendation to Government. It is perfectly open to Government to

make a declaration that the roads in question are public roads through which all classes of people can pass. That such a right vests in the Government is admitted in V T. L. R. and therefore Government has the ultimate power to dispose of this question. I submit that it is not advisable that we should accept the views of my friend Mr. Krishna Aiyangar because the civil court will not be an ultimate authority in this matter.

Mr. Krishna Aiyangar made a very uncharitable pronouncement on the conduct of persons who rather took this remedy by saying that we did not resort to the civil court because of the Satyagraha. I can assure my friend that this certainly is not the reason. Nobody can assure with any amount of certainty that in law courts we always get what we want. Even supposing that we have not, as already submitted, sought that remedy, it is open to us to approach Government to obtain relief. Therefore we resorted to the ultimate arbitrator and it cannot be said that it is because of the Satyagrahi that we did not go to a court of law and that I have moved this resolution. There seems to be a misconception with regard to the position of Satyagrahi and his relation to the civil courts in Travancore. I do not believe that he has no faith in the disposal of suits or in the administration of justice by the courts in Travancore. But since the remedy that he might obtain from the courts may not be satisfactory to him and the Government have the ultimate authority over the disposal of these matters, he does not desire to place them before courts in Travancore. At any rate, the considerations which weighed with me in moving this resolution have absolutely nothing to do with the Satyagraha movement.

It has been urged that this question is a religious question and that this resolution should not be accepted by this council as it is not competent to dispose of this matter. I am sorry so much has been said on this point. To my mind it is absolutely outside the question, and I do not admit that this is a religious question, as walking through public roads is not a religious function. Of course, when any body is walking through public roads, if a caste Hindu is polluted by a non-caste Hindu, he is not entitled to say that to some extent it hurts his feelings and therefore a non-caste Hindu should not be allowed to pass along the public roads. I do not find any difference in this case. A Hindu may or may not go to the Vaikam temple. A non-caste Hindu has nothing to do with the arrangements of the caste-Hindu going to the temple and worshipping there. Therefore I submit the question of walking through these roads has nothing to do with the religion. It is certainly not a question of religion, and if it was so, I would have been the last person to move the resolution. It was for the same reason that the question of temple entry was not raised in this Council. Therefore to say that the question of temple entry is a side-wind of the resolution that is now before the House is an attempt to cloud the issue. (*Hear, hear.*)

Mr. Subba Aiyar has not stated that by allowing the non-caste Hindus to pass through these roads the idol would be polluted. Such a case was never brought forward. Some observations were also made

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pointing out these facts. I submit that people are permitted to get into these roads. People are permitted to walk up to the road and hold communications with the people of the Vaikam temple. I take it that it can not be now urged that the question of pollution does arise. It has not been urged by any responsible authority that the idol would be polluted if people are permitted to pass these roads. I have mentioned in my opening speech that the enclosure to the temple is very big and the idol is far away from the road and therefore it is not likely to be polluted. If it was not so, probably that would have been the first argument for my learned friend to advance to oppose my resolution. I therefore take it that the idol will not be polluted. When they are walking through the road to enter the temple, they do not certainly begin their journey from the places where these prohibition boards are posted. It cannot be said that pollution in respect of these persons who go and worship in the temple begins at a particular portion of the road. I submit that that would be absolutely ridiculous. Supposing a caste-Hindu and a non-caste-Hindu travel together from one part of the road to the temple, and just at the place where these boards are put up pollution stops; a non-caste Hindu and the caste-Hindu advance. It is maintained that beyond the point the caste-Hindu is polluted by the non-caste-Hindu, but if he is polluted, he could be polluted further away from the prohibition boards. Therefore to say that this prohibition is maintained for the purpose of enabling the caste-Hindus not to go to the temple polluted is certainly not true.

MR. A. HOOGEWERF (*Nominated*): May I know whether it is not a fact that there is a lane leading to an Ezhava temple and further right up to the road?

MR. N. KUMARAN (*Nominated*): Yes. That is exactly what I said a little while ago. From that temple people get into the road and hold communications with the people in the Vaikam temple. Of course they do not travel this side and that side of the road. From the fact that they have a right to enter into the road and remain there it is certainly indicative of the fact that they are not liable to pollute the idol. One of the circumstances which I mentioned in my previous speech was that there was no system even in this prohibition. There is no method of restriction as regards the exclusion of some classes of people. There cannot be any doubt whatsoever as to the social position of these classes. I believe Mr. Subba Aiyar hails from Tenkasi—I am not quite sure—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may assure Mr. Kumaran that I know enough of Travancore to form a conclusion as to the social position of the people.

MR. N. KUMARAN (*Nominated*): I know he has been in Quilon for the best portion of his life for no less than 20 or 25 years. He knows the Ezhavas, the Kuravas, the Velans and I was very much surprised when I heard him say that he could not give an opinion whether an Ezhava was not much better than a Kurava or a Velan in social

position. I do not say that in a spirit of vanity, but I would say under ordinary circumstances, no one from these communities would be admitted into the court-yard of Ezhavas.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know why he does it?

MR. N. KUMARAN (*Nominated*): That is a different matter. I am just now pointing out the madness that is now being exhibited at Vaikam. These people are allowed to walk through the roads and they are not prohibited. Therefore I want to ascertain the principle by which the sentiments are guided and the usages are maintained. I do not for a moment justify any conduct that I might follow—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know whether the community is one whom he considers to be lower in status than his community?

MR. N. KUMARAN (*Nominated*): Generally. I said so in my speech and Mr. Subba Aiyar did not controvert that.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I said that Velans do go there for the purpose of taking *Kodikura* but just after that a *sudhi* is performed. I may also say that every argument of Mr. Kumaran has been controverted by me.

MR. A. HOOGEWERF (*Nominated*): Is it not a fact that the Swami at Varkala is doing away with all distinctions and the temple is open to every body else, even to the Pulayas?

PRESIDENT: It is absolutely irrelevant.

MR. N. KUMARAN (*Nominated*): All people are permitted to worship and some of the Pulayas live there even. I mentioned this circumstance at the time I moved this resolution. Mr. Subba Aiyer's objections were that these people are in no way inferior or superior to the other communities that are prohibited from walking through the roads, and that is the very reason why I said that he has no clear notions with respect to the relative position of these communities. Sir, I have been talking to some of my friends from Vaikam. They say that Ezhavas, Velas, and all these classes of people, though they do not make use of the road for purposes of walking, use it for the purpose of entering compounds adjoining the temple walls and work therein. The cropping of nuts, putting up of fences and all these things are being done by these people. I do not, therefore, see the principles under which certain classes of people are prohibited from passing this road, while other classes are not. Sir, I also admit that there is an amount of religious feeling or rather an amount of sentiment behind this prohibition. In my speech I said that there seems to be a sense of sincerity behind this. Is it not a small matter—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I know whether observance of pollution is religious sentiment or otherwise?

[Rao Bahadur K. A. Krishna Aiyangar.]

MR. N. KUMARAN (*Nominated*): I am not in a position to give any reply. With reference to that question, I do not believe and I do not admit that it is a religious sentiment, and it is my view. My friend may differ. My point is that it is only a social question. Sir, in the Popular Assembly we were agitating for the removal of the prohibition boards. There are boards at Tirunakkara and nobody is respecting the boards there and all classes of people are walking through that road. Now the question of sentiment of those who go to worship at Vaikam as well as at Tirunakkara cannot be different. The same person cannot have different sentiments. Even supposing that there is a religious sentiment, I do not find that there is any principle behind this attenuated form of sentiments. What I therefore submit is that, if Government as a matter of fact had not put up these prohibition boards, people would have made use of these roads and caste-Hindus would not have raised any objection. I know that, in spite of this fact, roads passing along several temples which were not being used formerly, are now being used without any objection by the Ezhavas, for instance the roads adjoining Chengannur, Tirunakkara, and Aranmula temples. In all these places there are caste-Hindus and there are very important major Deva-swoms, and the roads adjoining these temples are being used by all classes of people.

MR. T. LAKSHMANAN PILLAI (*Nominated*): May I know whether pollution is a religious sentiment or merely a social one?

PRESIDENT: He is dealing with another matter.

MR. N. KUMARAN (*Nominated*): What I therefore say is that so far as sentiments are concerned there is no uniformity. I do not deny the existence of the same. But the question is whether by an act of Government this difficulty could not be removed. I would point out one instance. The Chakkalas were not permitted to enter into Sirkar temples or for that matter in any private Hindu temples. But the Sovereign, as head of the religion, passed the decree that they could enter Government temples. Even now in many of the private temples in Travancore they are not admitted. In all Sirkar temples they are permitted. According to my friend, if people are permitted to pass through public roads, there will be the very great question of wounding the religious susceptibilities of caste-Hindus, which is a greater thing.

Mr. Krishna Aiyangar in the course of his speech to-day said that, in respect of several temples, distances between public road and the idol are different. My friend said that it may be due to some mysterious theory which might be advanced by each Tantri. I submit that the *Tantra Sastra* will not be so inconsistent. One Tantri cannot have one Sastram and another Tantri another. If they forego and relax some points, they may not be very material.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): May I know whether these Tantries at times prescribe different scales when devotees want to make certain offerings? For instance at Alleppey, it is more costly than at Vaikam.

MR. N. KUMARAN (*Nominated*): I know that. It has nothing to do with our present problem. The question of distance from road to the idol cannot differ in the case of each temple. The pollution distance also cannot be different for each idol. In respect of ceremonies I have known that there is difference.

MR. P. K. NARAYANÄ PILLAI (*Ambalapuzha*): May I draw the attention of the President to the time?

PRESIDENT: I propose to sit for 5 minutes more. Perhaps Mr. Kumaran may finish by that time.

MR. N. KUMARAN (*Nominated*): A good deal has been said about the doings of the Satyagrahis at Vaikam. I submit that is an unnecessary item dragged in to cloud the issue. We have absolutely nothing to do with the Satyagrahis in bringing forward this resolution. So it is not right to say that the Satyagraha at Vaikam influenced me to table this resolution except to this extent that the evil of untouchability has created a stalemate which has to be removed by some means or other.

I am very much surprised that Mr. Panjikaran should have grown eloquent in opposing me. Probably he made the most eloquent speech that he has ever made in this Council and told us that he was against the way in which the remedy is sought as it is a social and not a political work—a work which has been started by his own Lord and Master, Jesus Christ. It was He in the history of the world who for the first time disobeyed the law of His country and suffered punishment. Any one who has read the literature on the subject will see that Mr. Gandhi and Count Tolstoy got the inspiration from the Bible. I am sorry that Mr. Panjikaran who is a true Christian should have found it necessary to kick the Satyagrahis.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether Jesus Christ suffered by offering Satyagraha with the Government of any State?

MR. N. KUMARAN (*Nominated*): I am just quoting history. Therefore, it is very unfortunate that, of all persons, Mr. Panjikaran, who is a Christian, should have opposed the Satyagraha movement. I am sure that if Lord Jesus came to the earth, He Himself would have welcomed Satyagrahis. (*Hear, hear.*)

Mr. Panjikaran referred to my conversation with him. He also referred to another conversation that he had with another man from outside Trivandrum. That gentleman seems to have told him that Satyagraha could not be stopped because it could not be revived. My friend did not say who that gentleman was. Of course, it was not I, for I did not meet him after the last meeting of the Council and before this meeting. In the meanwhile, the *Jatha* had come and gone. So it is quite positive that it was not I who told him like that. In the conversation that I had with him, I tried my level best to convince him that the Satyagraha movement is quite different from my proposition and that he, being a lawyer, should not be inclined to punish a person vicariously and that I should not be punished for any offence committed by somebody else. So, if my friend had any sympathy for the

[Mr. N. Kumaran.]

proposition, he ought to vote for me (*Hear, hear*). But Mr. Panjikaran had made up his mind long ago that the Satyagrahis have nothing to do in Travancore. So it has become an article of faith with him that he should not support the Satyagrahis.

PRESIDENT: It is time, Mr. Kumaran.

MR. N. KUMARAN (*Nominated*): I want a little time more, probably five minutes, to finish my speech.

PRESIDENT: Yes, very well. It would be an advantage if you finish your speech before we rise for lunch.

MR. N. KUMARAN (*Nominated*): I found that he has conceived this idea and I found that it was absolutely useless to argue with him and therefore came away.

Mr. Krishna Aiyangar also said something in condemning the action of Satyagrahis. Sir, I am not here to support him. But my only point is that all these questions are more or less irrelevant. Satyagrahis might be very wise or not. That should not be the reason why my proposition should be voted against. I am not bringing this proposition for the sake of Satyagrahis. I brought forward this proposition in the interests of the 17 lakhs of people in the hope that Government might probably remove the stain if the resolution is carried by the House.

Sir, I cannot close my observations without referring to one circumstance. I cannot but express my feelings of gratitude towards all those caste-Hindu members of this House, especially the Nayar members, who spoke in support of the resolution. Sir, at the time I moved the resolution, I also referred to the sympathy and a large measure of sacrifice the Satyagrahis have been receiving from the hands of the caste-Hindus and that I did not expect any sympathy from the Brahmin community (*hear, hear*), because they are so conservative. They are the last persons to give up the vested rights and privileges. It is quite natural. But I never expected that men of culture and erudition and refinement as Mr. Krishna Aiyangar and Mr. Krishna Aiyar should have spoken against my resolution and that in such vehement terms (*hear, hear*). I should submit that I do not take as a compliment the observations made by Mr. Krishna Aiyangar that, of all the members of this Council, I was the only person who had sobriety of language, as it implies that all the other members who supported me had been using very violent language. Perhaps it is one way to win sympathy for the opposition. (*Hear, hear*.) I would also say that Mr. Krishna Aiyangar was not right when he tried very vehemently to refute the arguments advanced by Mr. Mamman Mappillai on the ground that he insulted the Hindu religion as well as the lawyers. What I would say is that the Deputy President of this Council is a man of ripe experience and mature judgment and therefore he ought to have been a little more moderate and more sober when he pronounced his criticism upon the observations made by him. I do not say that we should not have patriotism for the cause of our religion. I am as much

religious as any caste-Hindu even though my friend may not admit that I am a Hindu. Nevertheless, I have very great respect for the tenets of Hindu religion and I do not think that I can yield in my admiration of the Hindu religion to Mr. Krishna Aiyangar. That is no reason why we should be growing eloquent over passing remarks made by one of the members of this Council. Anyhow, I think that one of the observations is particularly unwarranted and that is, that Mr. Mamman Mappillai abused caste-Hindus—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Beg your pardon. I never said that.

MR. N. KUMARAN (*Nominated*): Then somebody said that.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Subba Aiyar used that towards me on a prior occasion.

MR. N. KUMARAN (*Nominated*): I beg Mr. Krishna Aiyangar's pardon for that. Further, it is not proper in this Council that we should enter into the motives and inner workings of hearts of the members.

PRESIDENT: I do not think that Mr. Krishna Aiyangar said anything about the motives.

MR. N. KUMARAN (*Nominated*): I wish that the members should not indulge in such observations. Sir, I should like to mention one other circumstance with respect to the debate and that is all non-official members except one or two were very sympathetic towards the proposition. Mr. Mamman Mappillai made a very vigorous and a very comprehensive speech on the subject and supported the resolution strongly. I think most of the members, Christians or Nayers, have supported me and I now leave the question entirely to the discretion of the members of this Council. It is unfortunate that the Government thought it necessary to oppose the resolution. When a similar resolution was tabled, or rather a wider resolution, in the Madras Legislative Council and discussed on 22nd August, 1924, the Government immediately accepted the resolution. So I thought the Travancore Government would accept this resolution all the more. If it could be accepted by an alien Government without being deterred by considerations of the caste-Hindu sentiments, I cannot understand the reason why our Government—a Hindu Government—cannot go to the extent of accepting a resolution which is a more modest one. Further, an order has been passed by the Madras Government in the first week of December with respect to the Kalpathi incident and after that order my conviction was still greater that this resolution would certainly be accepted by the Government and that these roads would be thrown open to all classes. Now, we find that Mr. Subba Aiyar has been vigorously opposing my resolution and stating that Government are not prepared to accept it. I only say that it is a little too disappointing and a much more painful thing for me to contemplate that, when the British Government is prepared to accept the resolution, a Hindu Government rejects it in spite of the fact that it has been worded in modest terms. Further, it was referred to by Mr. Mamman Mappillai, and I also refer to it, that when the *Savarna Jatha* met Her Highness the Maha Rani Regent, her gracious reply was that the

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matter would be considered in the light of the discussion and disposal of the resolution which was before the Council.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think it is so. Is it an authorised version?

MR. N. KUMARAN (*Nominated*): If Mr. Subba Aiyar objects to that, I have only to say that I do not have a copy of the exact reply in my possession and so I am subject to correction. I believe my friend will say exactly what was the reply given by Her Highness the Maha Rani Regent. As this question will be considered by Her Highness the Maha Rani Regent in the light of the discussion here, I think that it would have been fairer for the Government if the sense of the House is ascertained without use of the official block. If the official members were to stand as one man, the result would be 36 members voting for or against the resolution and we would not be getting the benefit of the experience and intelligence of the official members in the disposal of the matter. (*Hear, hear.*) With these words, I leave the question for the disposal of the House. I hope that all the circumstances will be taken into consideration by the members of this Council especially by Messrs. Panjikaran and P. T. Thomas who are Christians and whose religion stands for universal brotherhood—for fatherhood of God and brotherhood of man. With these words, I commend the resolution for the acceptance of the House.

The Council adjourned for lunch at 2-43 P. M. and re-assembled at 3-22 P. M.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, as has been remarked by Mr. Kumaran, the resolution before the House has been discussed at considerable length, and I may say, with considerable ability, by the non-official members and I do not think I should tax the House with any long speech. But at the same time I may make a few observations as some of the remarks from the non-official members are due evidently to a misconception, either of fact or of law. I therefore crave the indulgence of the House for a few minutes.

In the first place, I may assure Mr. Kumaran that, when Government decided to oppose the resolution, it was not on account of the fact that they had no sympathy with the aspirations of the non-caste Hindus. I dare say, he will realise that Government, as I said at the outset, have been doing everything in their power to remove the disabilities and to ameliorate the condition of the non-caste Hindus; but there are certain limits and in certain cases there are certain safeguards which they have to provide before they can take any further step. If it is purely a question of civic right, if it is purely a question of political right, the solution is a very easy one; but if the matter is likely to affect other communities, especially their religious feelings and sentiments, the importance of the matter becomes all the more greater, and in cases of that kind before any innovation is made, Government have

to be satisfied that whatever they do will not affect the religious sentiment or religious feeling of other communities. They have to avoid innovations which are likely to irritate or wound the religious sentiments of other communities. It is the paramount duty of Government to maintain the *status quo ante*, and, therefore, it is on that account and on that account alone that the Government decided to oppose this resolution. It was admitted by Mr. Kumaran himself that he cannot adduce any evidence to show that the communities that have now been prohibited from using the roads in question were ever using them. Therefore, when on a particular day, under the Presidency of Mr. Kumaran, a meeting was held at Vadayar—

MR. N. KUMARAN (*Nominated*): I submit, Sir, I had never been to Vadayar.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg his pardon. I meant Mr. Aiyappan. When in that meeting Mr. Aiyappan declared that they were going to enter forcibly into the *San- ketam* limits of Vaikam and also into temples for worship, when it was also resolved at Vaikam that they would have a procession into the prohibited area with Ezhavas, Pulayas and others who belong to the prohibited classes, the caste-Hindus evidently got agitated in mind. Therefore, when there was a likelihood of breach of the peace, as was evidenced by various petitions, memorials and representations from caste-Hindus, the Magistrate had no other go but to maintain the *status quo*. Mr. Kumaran, as a lawyer, will admit that, in a case of this kind, it is the duty of the Magistrate, it is the duty of the Executive to maintain as far as possible the right of the party in possession, so to say, and to maintain the *status quo ante*. The party who wants the innovation must establish his case in a court of law. Therefore, I say, it is in recognition of the paramount duty of maintaining law and order in a particular locality, of the duty to maintain the *status quo*, that Government had to step in. It does not in the least mean that Government are in any way opposed to the legitimate aspirations of the communities that have now been prohibited. Therefore, I can assure him that he may expect all sympathy from Government wherever and whenever it is possible for them to show it. They will do whatever they can legitimately do for these communities that are now prohibited from entering the roads in question.

Passing on then to the various criticisms of the non-official members the first objection taken by Mr. K. Paramesvaran Pillai was that I introduced the real object of the motion and that therefore I was not fair. But I can assure him that I did not introduce it for the purpose of showing that if we pass the resolution Mr. Kumaran will at once get the right of temple entry recognised. That is not at all what I said. When Mr. Kumaran himself admitted that Government have been and are doing everything possible for the amelioration of the condition of the non-caste Hindus, it is certainly a legitimate question for anybody to ask why, when the communities have been so much benefited by the Government, such an agitation should be set up in Travancore to prove to the

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rest of India and to the world at large, that there is something rotten in the State of Travancore; in other words, that we are worse than brutes in not allowing the elementary right of citizenship to our fellow-men. To that extent, certainly, the news has been circulated. In order to show that it is not an ordinary civic right or elementary right of citizenship that is in question, but that it is something more, and also to show how the agitation arose, I traced the history of the agitation, and not with the object that it should in any way prejudice the House in the decision of the question at issue.* In order to show how the agitation itself was started, I traced the history of it, and to my mind it is connected with the resolution, because, as I said, the agitation started with the resolution that they should have a forcible entry into the temple and into the *Sanketam* limits. Therefore, I say, both these are connected together. As I said, even at the joint conference of the Nayar Samajam and the Elzhava Samajam these two things were put together as one of the subjects and were made inseparable; and the question of entry into the prohibited roads was only the first step according to the Congress men and according to Satyagrahies. Therefore I say both are inextricably connected and there is no getting out of the difficulty. Therefore I was perfectly right in tracing the history of the movement and in attributing to it the ultimate object of temple entry.

MR. N. KUMARAN (*Nominated*): Are there not any number of temples in Travancore near which there are public roads through which all classes of people are allowed to pass and is there not the possibility of all these classes of people attempting to enter these various temples?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, there is no such possibility. I speak of the present agitation. My friend asks me the reason why the non-caste Hindus should have chosen Vaikam. I say it is for the same reason for which Mr. Kumaran thought it fit to move that the Vaikam road be thrown open to all classes of the public. It may be because there are certain advantages at Vaikam which the non-caste Hindus do not have anywhere else, or it may be that they consider the Vaikam temple to be the most sacred temple. What weighed with Mr. Aiyappan and others who thought like him in choosing Vaikam as the place where they should first make their forcible entry into and walk along the road, I do not know.

MR. N. KUMARAN (*Nominated*): My information is that there is absolutely no resolution like that. Even supposing that a resolution was passed, I am sure that there was no resolution that the entry should be effected in any particular temple.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Of course, the thing was started at Vaikam. It may be for ever so many reasons. I am only concerned with the fact that the two are inextricably connected and that therefore I was justified in dragging the question of the real object. I do not know whether any member can

discuss the subject without dragging the question of Satyagraha also ; because there was no Satyagraha movement in Travancore before. What was the resolution passed on the 29th February 1924? It said that the next morning they must proceed in procession along the prohibited road with Ezhavas and Pulayas. When that was passed, the Magistrate, on the representation of the caste-Hindus, had to say that the Ezhavas and other communities who have not hitherto been using the roads in question were prohibited from using them as he knew the object of the procession and as he anticipated breach of the peace. The Magistrate's order was not addressed to the members of the Satyagraha movement; it was not addressed to anybody in particular; but, it was addressed to the communities who were not using these roads, in other words, the Ezhavas and other communities. What was the result? Many members of these communities wanted to disobey the order by having a procession on the 30th March, 1924 and have been ever afterwards continuing what is called the Satyagraha movement. In other words, there was an open declaration of war, so to say, an open declaration of their firm resolve for disobeying law and order, by entering into the prohibited places in question. Here again the cause of the Ezhavas was taken up by the Satyagrahis. Therefore, I say, here also both are very closely connected and the one cannot be divorced from the other.

Then, passing on to the various criticisms of Mr. Changanachery Paramesvaran Pillai, I was surprised to hear from Mr. Paramesvaran Pillai that V T. L. R. ruling is a mere *obiter dictum*. I believe it is usual to get over a ruling which cannot be explained by saying that it is inapplicable to the case in question. I do not think he meant it seriously when he said that the dictum was *obiter*. I only wish to draw his attention and the attention of the House to the points referred to the Full Bench in that case. These are the points:

"(2) Whether the distinction between what is called the common highway or thoroughfare and King's highway obtains in this State and whether the general law of the land sanctions the placing of any restriction upon the right of the public to carry religious processions of any section thereof along the thoroughfare."

The first portion of the issue referred was whether there was any distinction between public highway and common thoroughfare, and all the five judges without exception say that there is such a distinction and that the public highway is one which is open to all classes for all purposes not forbidden by law while the common thoroughfare may be open to particular classes of the public or if open to the whole public not for all purposes but only for certain purposes.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask Mr. Subba Aiyar whether it was found in that case, as a matter of fact, that the road in question was open to all classes of people?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It was found that there were two classes of roads.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In that particular case, was it not found as a matter of fact that the road in question was open to all classes?

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It was.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The question did not arise whether a general distinction between King's highways and *gramaveethis* existed in Travancore.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It did arise in this sense; one of the points referred to the Full Bench was whether in Travancore the distinction between *Rajapatha* and *grama-veethi* obtained.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask whether in that particular case it was necessary to decide whether the road was open to all classes, or whether it was open to all classes for all purposes?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): They were asked to say whether there is a distinction between *Rajapatha* and *gramaveethi*. It was decided that such a distinction obtained in Travancore. While defining the two kinds of ways, with a view to bring out the distinction clearly, their Honours said that in the case of *Rajapathas* all classes of people had a right of way for all purposes not forbidden by law, while in the case of what is called *gramaveethi* the restriction is with reference to particular classes or if with reference to all classes for particular purposes only. To that extent it was a ruling by all the five Judges of the High Court and also of the Division Bench, and not mere *obiter dictum*. I may, for the sake of my friend Mr. Paramesvaran Pillai, refer to the X T. L. R. case where it was definitely stated as the essential requisite for a way being called a common way that it must be open to the use of certain classes of the public or if for all classes of the public for certain purpose only. I may also say that in the X T. L. R. case, to find out who the aggressor was they had to go into the question whether it was a common way or a high way and whether the Salvation Army, followed by newly converted Parayas, had a right to go through the Vellala Street, and it was decided that they had no such right. Therefore, it is clear that Their Honours followed V T. L. R.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I ask Mr. Subba Aiyar whether there was a finding in that case on the point?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes. My friend based his argument by reading the evidence as to the commission of the offence in that case. All that is not quite relevant to the matter in issue. In that case they said clearly:

"It may here be observed that the distinction between a public path open to all classes of people for all lawful purposes and a public path open only to a particular class for all or for particular purposes, has not been sufficiently borne in mind in saying that the complainant had a right to go through the street in question with a Pariah

following. The decision reported at V., T. L. R., 93 clearly lays down the distinction between the two classes of public paths. A finding on this question was necessary before convicting the prisoners of wrongful restraint. We are not at all satisfied upon the record that the path in question was open to all classes of people without any distinction of caste or creed and for all purposes. A path may be a public path and yet may not be open to all classes of people to pass through."

I do not know whether anything further is necessary to express the opinion of the court. My friend has nothing to say with respect to that extract. He only read something with respect to the commission of the offence. We are not at all concerned with that. The distinction between a highway and a common way has been sufficiently and clearly laid down in 5 T. L. R. and it stands not overruled till now but accepted as correct. Therefore the observation of my friend that 5 T. L. R. ruling is an *obiter dictum* is absolutely unsound. Mr. Kumaran repeated the same argument. Of course, in the case of Mr. Kumaran, he is one who is personally interested in the decision of the resolution and is therefore likely to be prejudiced. It is common knowledge that one cannot argue his own case well. He is therefore unable to see the real force of 5 T. L. R. Then, my friend Mr. K. Paramesvaran Pillai said that when I wanted to distinguish between a public highway and a common way and wanted to establish a case, on the test laid down in that ruling, I was begging the question. I beg to differ from him. I do not want to beg any question. Even granting that it is a public road in that it belongs to the Sirkar, and is maintained by it—and I will assume that—two other most important tests did not exist in this case. As has been admitted by Mr. Kumaran they have never been using these roads. Whether a mere non-user will deprive one of his right, I will come to that presently. There is not only non-user here but there is also an absolute prohibition so far as those communities are concerned.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether prohibition itself does not imply that there has been a prior user.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, there may not be a prior user at all. One of the Judges says that it will be better for the Government to notify what are private roads and what are common ways. Evidently with a view to give effect to that ruling, in order that the people may not misunderstand the actual state of affairs, the notice board might have been up put there.

MR. A. HOOGEWERF (*Nominated*): What was the object of Dewan Peishkar Mr. Sankara Menon in putting up the notice boards?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In the first instance I do not think Mr. Sankara Menon was the Dewan Peishkar then.

MR. A. HOOGEWERF (*Nominated*): Who was responsible for that? What was the original object in putting it up?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am very sorry that not knowing the time and the name of the person responsible, it is not possible for me to say what his motives were.

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MR. A. HOOGEWERF (*Nominated*): What is the present motive of putting up the notice board? (*Laughter*).

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): They want to continue the existing state of things. The District Magistrate under the powers vested in him according to the Criminal Procedure Code does it.

MR. A. HOOGEWERF (*Nominated*): Is the prohibition order simply to prevent a breach of peace because Government thinks that it is not a public road?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The order distinctly says that the communities have never been using these roads and if they do so there will be breach of peace.

MR. A. HOOGEWERF (*Nominated*): Since this dispute began, have the Government during the last ten months notified in the *Government Gazette* that the roads in question are not public roads.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there is any necessity at all for any such declaration. Because I dare say that Mr. Srinivasa Aiyangar (one of the leaders of the movement) himself said that the Government view-point is that it is not a public highway but a common way. It may be that Mr. Srinivasa Aiyangar did not agree with the Government's views. But it is quite a different matter. But I say the view-point of Government that it is not a public highway is known to Mr. Kumaran and others whom he represents. I think Mr. Kumaran will agree with me that Mr. Hoogewerf's point is perfectly irrelevant to the discussion.

MR. N. KUMARAN (*Nominated*): I demur to that.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes. If there was anything else to show that the Ezhavas were using the roads, then my friend Mr. Paramesvaran Pillai may be justified in saying that I am begging the question. When those questions were admitted as a fact, I do not see anything else is necessary in this case to show that it is not a public highway.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The fact that they have not been using the roads is not denied and therefore you are begging the question.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If again as is laid down in 5 T. L. R. there is the further condition that it was not dedicated to the whole of the public, as a particular section was prohibited from using it, it ceases to be a public highway and therefore there is nothing else to be considered. So I say there was no begging the question at all.

MR. N. KUMARAN (*Nominated*): My friend was repeatedly referring to the circumstance that there was no evidence to the past user. I would offer a personal explanation and would ask him to refer

to *The State Manual*—a Government publication in which the circumstances that I mentioned in my speech about the supply of firewood is described by Mr. Nagam Aiya.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have not read the State Manual. Supposing it says that there was a tradition, how can anybody act upon it? At any rate according to my friend Mr. Kumaran, within the memory of any body living, at any rate, nobody of the communities in question ever used the road. It is enough for our present purpose that, for very many years not less than a century, no member of the communities concerned ever used the roads. In a court of law we are not supposed to act upon traditions particularly in a case of this kind, but to act upon positive evidence. Therefore, the mere fact that there was a tradition is not enough, and I believe ever so any traditions are alleged by one side and disputed by the other side. We do not think any weight can be given to these things. One other point raised by Mr. Paramesvaran Pillai was whether the Government are in a position to close the roads to the communities that are now allowed to use them. I thought that when I gave the answer to Mr. Paramesvaran Pillai, he must have known the position that I took. And I thought it was absolutely unnecessary to dilate upon the question for the reason that it was foreign to the present purpose. In other words, as has been admitted by Mr. Kumaran, whether the road, was a Government land or a private land, the right of the public to walk along and re-pass, can be acquired only by dedication. In this particular case there is evidence that one section never used them. Therefore dedication proper can be regarded only to a section of the public—only caste-Hindus and others. In 5 T. L. R. there is an observation that there may be a dedication to a section of the public. But if we go by the British Indian Rulings, a dedication to a portion of the public is absolutely void. That is in accordance with the English rulings also. Therefore there cannot be a dedication to a section of the public, viz., to those who are using them. If such a dedication is void, as the better opinion seems to be, I daresay the only other alternative to be inferred from mere user is that the persons who are using them are using them with the leave and license of the owner. I said only so much. The only other alternative is that those who are using it are using it by the leave and license of the owner. I believe that from mere user no dedication can be presumed. I believe there are two rulings, 7 T. L. J. and 9 T. L. J. to that effect, so that the position I expounded at the outset, namely, that the roads are not public highways is perfectly intelligible and perfectly sound and I can boldly assert that it was not contraverted by any member of this House.

MR. A. HOOGEWERF (*Nominated*): May I know whether the Law Member can throw any light on the fact that the Christians and the Mahomedans have been using them?

PRESIDENT. He has just been saying that they are using them.

MR. A. HOOGEWERF (*Nominated*): Is the fact that they are using these roads due to their political importance?

[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No importance. The road may be open to certain sections of the public and closed to other sections. As I said in my opening speech it must be due to the fact that they do not observe pollution so far as Christians and Mahomedans are concerned. There might have been ever so many other reasons. This much we know, that as a matter of fact in the case of the Christians and Mohammadans, the Hindus do not observe pollution.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Is there any objection to close this road to Christians?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If it is a case of leave and license, it may be closed as laid down in 5 T. L. J.

Then Mr. K. Parameswaran Pillai referred to the fact that the Devaswom Commissioner or the Government refused to contribute towards the Municipality. Even if it is a private land, I do not think there is any provision in the Municipal Regulation by which the Municipality can ask for contributions from the Devaswom Department or the Government on the ground that they are cleaning or lighting a road way. In the roads in question there are houses abutting on them. House tax is levied. If so, it is the duty of the Municipal Council to attend to the functions of cleaning and lighting the roads. Therefore when Government declined to give a contribution, it is not on account of the fact that they admitted the roads to be a public highway open to all but on the ground that the Government were not bound to give any contribution to any Municipal Council because, after levying a tax from the Municipal inhabitants thereof, it is bound to look after the sanitary conditions of the persons residing therein. Therefore I do not think it leads to any inference.

MR. A. HOOGEWERF (*Nominated*): Is it not a fact that the Municipalities receive the fee for the temporary shops put up there during Utsavom time?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May be so. But that is under a particular section of the Municipal Regulation.

MR. A. HOOGEWERF (*Nominated*): I mean to say within the prohibited area.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It may be so. Then, members referred to many social customs and evils which have been removed by the Government and therefore this being one of them the Government are bound to do the same Mr. Mammen Mappillai also said that, if the Government are firm in the matter, the question can be solved without any opposition from the orthodox section. With reference to these observations I can only say that these have nothing to do with religious sentiments. So far as our public institutions are concerned, it is open to Government to make their own arrangements.

and make their own rules. But in the case of a Hindu temple or of a Christian Church or of a Mahomedan Mosque, in the case of such institutions, Government cannot interfere and say what one should do or one should not do. It is regulated by the heads of the institutions themselves. However much we may recognise the principle of equality in practical administration, there is the difficulty to enforce it in matters religious. We do not know what all may happen when the religious susceptibilities of one community are wounded. We know how the Shanar riots originated and how they affected even Travancore. They were due to the fact that the Shanars wanted to enter Hindu temples. It is not that every Hindu who worships in the temple is orthodox. Once the religious feelings or religious susceptibilities of persons are wounded, a breach of the peace is inevitable to follow and the consequences are difficult to foresee. Such being the case, the Government should be very careful to see that, by any innovation they propose to bring about, the religious usages and susceptibilities are not wounded. In the matter of schools it is open to the Government to tell any guardian: "All schools are open to all classes. If you do not like that, you better withdraw your child from the school and make other arrangements for his education" By joining a school no religious susceptibilities are affected. If anybody thinks he is polluted, it is open to him to have the same removed by a bath or otherwise. But in the case of religious worship, no one who is entitled to worship can be prevented from doing the same and his religious susceptibilities are easily roused and bad blood is the result. So, in matters of this kind, caution is absolutely necessary.

MR. A. HOOGEWERF (*Nominated*): If Government thought that this question had anything to do with religion, why was it that the resolution was admitted into the Council?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am just coming to that. In the first place I would ask Mr. Hoogewerf to read the rules properly because what the rule says is that matters prohibited under Section 11 cannot be discussed in this Council. Any measure relating to religious usage can under Section 12 of the Regulation be discussed and passed by this House; only, the previous sanction of the Dewan is necessary. Therefore, to discuss or pass laws regarding religious usages of various communities, this Council is competent; only, any member who wants to have it discussed will have to take the sanction of the Dewan.

MR. N. PADMANABHA PILLAI (*Karinagapalli*): What about questions relating to Devaswoms?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will come to that. So then, this Council does not cease to have any jurisdiction on the ground of religious usage as the rules do not prohibit matters covered by Section 12, but prohibit matters covered by Section 11 only. As for the question of the Devaswoms, it is only a portion of the roads at Vaikam that belongs to the temple. There are other institutions similarly situated but we do not know anything in detail about

[Mr. K. C. Mammen Mappillai.]

them. We do not know whether they will involve properties belonging to them. Therefore, in order to afford the Council an opportunity of discussing a matter which has been the subject of comment everywhere throughout the State, the President evidently thought that it was not desirable to be over-strict in these matters, and I do not know whether it is a matter to be taken advantage of in discussing the resolution. If the House so desires, I daresay the President will be over-careful in admitting a resolution. Religious usages are not beyond the cognisance of this Council. Strictly speaking, if it is a matter relating or affecting Devaswoms, it ought not to be discussed. But as I have already pointed out, being a matter of public importance agitating the whole of India, it was thought expedient to allow the members to discuss it. Then again, some members said that I did not say what the pollution distance was or whether the idols would be polluted. I thought as a representative of Government it was not proper for me, except to casually refer to the matter, to go in detail to the nature and extent of the prohibition likely to wound the feelings and susceptibilities of certain communities. Therefore I said that the oppositionists based their case upon religious sentiment and I emphasise every word of it. I also referred to the question of pollution. Every member of the House knows that it is their contention that the temple will be polluted. Mr. Kumaran said if it is a question of pollution it may be a religious sentiment; it may be a correct statement according to him, or it may be a social evil; whatever it might be, if the people concerned rightly or wrongly believe that it is a matter of religious sentiment and feeling, I say this Council should not interfere. Beyond that, I do not want to go, because I thought I would be over-stepping my bounds if I had stated in detail about distance pollution and discussed the opinions of *Tantries*. But I *did* make my position clear that the opposition was based upon religious sentiments.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I know whether Mr. Subba Aiyar concedes the jurisdiction of this House to discuss the question of Devaswoms?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So far as religious usage is concerned this House can discuss it; but if it is a matter affecting Devaswoms, you cannot discuss the same.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industry, North*): In trying to prevent admission of low caste Hindus in schools, the guardians and parents of pupils thought that they would be polluted by coming in contact with the members of the low-caste communities and it would be difficult for those pupils to wash themselves both in morning and evening. So does it not also become a religious question?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, because the institution itself is not a religious institution. It was open to Government to say to a guardian "you can send your children to a public school or take them back". In the case of a religious institution Government cannot and will not say "you shall not worship there even though you are entitled to". A public institution under the control of and maintained by Government is quite a different thing from a religious institution over which Government have a sort of supervision. Every worshipper has got a right to see that the existing usages are maintained.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industry, North*): Government have been putting forward this objection of pollution even in the case of certain schools.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Government can have control only in the case of a public institution. They have nothing to do with religion. If in a certain school there is objection on a religious ground on account of the proximity of the school to a temple or otherwise, the Government are in a position to provide admission to other communities by opening a new school.

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industry, North*): Is that an argument of Mr. Subba Aiyar put forward in order to prevent the admission of certain classes to certain schools? I am asking whether there are any such schools.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There are still a very few.

MR. A. HOOGEWERF (*Nominated*): May I ask Mr. Subba Aiyar whether during Utsavam time some of these non-caste men mix with caste men and no one is the worse for it?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am not the religious head of the institution. The religious head may contradict it. My opinion will not be of any value and as such I am not going to give my opinion.

Mr. Kochukunju Pillai said that there was difference in the distance in different temples and Mr. Krishna Aiyangar also emphasised it. It may be due to several reasons. That point also struck me and I was very inquisitive to get an answer from the *tantris* with whom I had opportunities to discuss the matter on one occasion or other. They give elaborate rules on the subject and say that the extent of *Sankethem* limit will depend upon the size of the image, the dimensions of the temple, the height of the innermost door-way and other matters. All these, they say must have been taken into account at the time of the consecration of the temple and the *Sankethem* limits fixed then. Mr. Kochukunju Pillai has now put the very same question. The *tantris* say that

[Mr. V. Subba Aiyar.]

there are many circumstances to be taken into consideration in deciding the same. The mere fact that the custom is not consistent throughout the State is therefore no argument.

MR. N. KUMARAN (*Nominated*): May I ask Mr. Subba Aiyar whether it will differ in the same temple from day to day?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It may not. I understand his implication. He wants to know why, when the original notice board was fixed at Kallupalam, it was subsequently altered.

MR. N. KUMARAN (*Nominated*): That is another point. All that I am saying is that there are ever so many temples by the side of which they were not permitted to walk but are now permitted to walk.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There are ever so many such roads. But if Mr. Aiyappan and those who think like him did not make an open declaration of war and make their resolution known to the whole world, probably no one would have noticed the fact that they wanted to go through these roads and probably they might have been walking along them now. But when you want to declare a right and proclaim to the world that you are going to enforce that right, then the people would say "we must be on the look-out. We should see that our custom is enforced". The whole thing probably would have gone on without notice, and everybody would have had the right in course of time with the spread of education, growth of enlightenment and tolerance. Probably then they may be willing to admit the Ezhavas into all these roads. Though I, or some other gentlemen, may not see that day, perhaps there may be a time when the Ezhavas are even allowed to enter the temple. But it is when they want to force the pace and want to have a revolutionary change when others are not prepared for it, all this difficulty arises.

MR. A. HOOGEWERF (*Nominated*): What about the prohibitory Boards?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think the question has any relation to this subject.

I say therefore that the communities were ill-advised in bringing up the matter in the manner in which they did.

Mr. Lakshmana Pillai did not approve the way in which the resolution was brought up. He struck the right chord when he said that sufficient propaganda work should be done and that if we approach the orthodox section after that, the chances are that they will be agreeable to this. Such a thing may be done. But I do not think so far as the resolution is concerned, there is any difficulty for Mr. Lakshmana Pillai to vote against it. I may here refer to the arguments of Messrs. Narayana Pillai, G. Paramesvaran Pillai and T. K. Velu Pillai. I am glad to acknowledge that they have argued the case of Government. But the sympathy towards the communities concerned has evidently made them

to wind up their speech by saying that they are inclined to favour the resolution. Individually, Mr. Narayana Pillai or Mr. G. Paramesvaran Pillai may be right. But they have to recognise that the Government have got certain responsibilities and duties in the matter. The Government are bound to support the existing state of things and maintain the *status quo* and not to enforce an innovation upon unwilling people. I think the members of the House will realise the delicacy and the difficulty of the Government in this matter. I may also here refer to the arguments of Mr. Narayana Pillai who found it rather difficult to believe that, in the face of the Land Conservancy Regulation and the Devaswom Proclamation, these roads can be a common way. I will answer it. In the first place whether it is a common way or highway has been referred to in the V. T. L. R. case by Justice Kunhiraman Nair. Whether every public highway is or is not a common way is determined not merely by the decision of the question whether it is owned by the Sirkar and maintained by them. Whether a particular road has become a Government road by virtue of the Proclamation is a matter quite foreign to the present purpose. I may at the same time add that the Land Conservancy Regulation did not make such a sweeping change to make all properties Government properties. It says:

All public roads, streets, lanes, etc.,

Save in so far as the same is the property of

(a) Proprietors of Edavagais or jenmies or holders of Inams or any person claiming through or holding under any of them.

So that every *jenmom* property is exempted under Regulation IV of 1091.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know from Mr. Subba Aiyar whether Regulation IV of 1091, that is the Land Conservancy Regulation, as ultimately amended says that unassigned lands of incorporated Devaswoms are Government lands?

MR. V. SUBBA AIYAR (*Additional Head-Sirkar Vakil*): Yes.

A *poramboke* land should in the first instance be a Government land. Government land does not include the property of everybody.

There are certain classes of lands mentioned in Section 2 which belong to *jenmies* or *Edavagais* or incorporated Devaswoms declared as *Porambokes* for the purposes of the Regulation and not for all purposes. In the case of such lands nobody is interested in seeing that they are not encroached upon. The Government have only the right to prevent encroachments and, if there are encroachments, to take action under the Regulation. The lands are not Government property for any other purpose.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I ask whether under Section 3 of the Regulation, rights and easements are conceded in favour of the public?

MR. V. SUBBA AIYAR (*Additional Head-Sirkar Vakil*): Certainly. Then again about the Devaswom Proclamation, I say it does not refer to the properties in question but to properties held under

[Mr. A. Hoogewerf.]

Devaswoms. What is stated there is that all those properties shown in the Sirkar revenue accounts as Devaswomvaka shall hereafter be treated as *pandaravaka*. What was Devaswomvakapattom, otti, anubhogam, or Viruthi will now be regarded as Pandaravagapattom, etc.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): *Tanatu*?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It will be regarded as *Devaswomvaka tanatu*. In this respect, so far as the Vaikam *kshetram* is concerned, you will find that it is entered as Vaikom *kshetram* garden. If the Proclamation is intended to include even Devaswom sites and make them Government property, the Proclamation will become useless.

Mr. Narayana Pillai wanted to say that he will have every sympathy for the resolution and that he will support it subject to the orders of the criminal or the civil courts. I believe he meant that those who have the order in their favour should be protected. I referred in particular to the views of Mr. C. F. Andrews, who is a staunch supporter of the Satyagraha movement, who agreed that there is an opposition which is genuine and real and which has to be reckoned with and therefore it is proper that the non-caste Hindus should go to a court of law and have their rights adjudged so that we may know where we stand. Mark it! my friends had nothing to say with reference to that.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I know from Mr. Subba Aiyar whether he thinks that the discussion here was on Satyagraha lines?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As I have already said you cannot divorce Satyagraha from this. I may in this connection refer to the *Savarna Jatha* memorial referred to by Mr. Paramesvaran Pillai which will show that the 5. T. L. R. case is not an *obiter dictum* as he now points out. The present contention is evidently an after thought.

The memorial says:

"The notification of 1884 came up for judicial interpretation before the High Court more than 35 years ago and the High Court then considered it 'expedient' to draw a distinction between King's highways and Gramaveethies and decided that the public roads mentioned in the notification of Government were intended to mean only King's highways and not Gramaveethies which all roads were presumed to be. We humbly beg to submit that the notification of Government made no such distinction or reservation. Probably but for this strained interpretation put upon the notification by the High Court, the problem with which the Government are now confronted would not have arisen."

Thus then, the memorialists admit that the position of Government is entirely due to the distinction laid down in 5. T. L. R. between King's Highways and *Gramaveethies* and the presumption is that they are all *Gramaveethies* until the contrary is shown. I may add that the memorial was presented by Mr. K. Paramesvaran Pillai as the leader of the deputation.

MR. A. HOOGEWERF (*Nominated*): Is it not the duty of the Government, when they knew that the High Court interpretation was

a strained one and not what they intended it to be, to make the matter clear by another notification?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That cannot be considered with this resolution. If the member thinks that the matter should be made clear, I would request him to bring in a Bill, and if it is in proper form, it will be considered by the Council.

MR. N. KUMARAN (*Nominated*): Cannot a notification or a Proclamation do it?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): An executive notification will not do. If it is a Proclamation, then the Council will not be able to discuss it. Again my friend said that the distinction between a public highway and commonway should be swept away. I referred to the X, T. L. R. case in which some converts from the Paraya caste wanted to pass through a street belonging to Nanjinad Vellalas. But the High Court said that they cannot. The Nanjinad Vellalas' right was maintained. In the Myladi case also they said that certain reservations were made, and the distinction was upheld and the use of the road was restricted. Similarly, in the case of many of these roads, it may be that other communities have acquired vested interests and rights which the non-caste Hindus have not acquired. In that case, am I to understand that my friends are suggesting that, by an executive order, the Government should say, hereafter there will be no common ways in the land but only public highways and that all people should be allowed to use them? I do not know whether any member of this House will advise the Government to take such a revolutionary step as divesting vested rights. If any such notification is passed, vested rights and vested interests will be seriously affected and jeopardised.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): May I ask whether in the case of particular roads Government did not make such a notification?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not see the point. In the case of the Vaikam roads there is an established custom and usage; but in the case of other roads we do not know anything at all. I say even the road which was the subject of X. T. L. R. case should now be thrown open. Each case will have to be investigated and enquired into on its own merits and a conclusion arrived at. In the face of the fact that there is an established custom, I do not see how this Council could by a resolution throw open all roads.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): May I ask what Mr. Subba Aiyar has to say to the observation in V. T. L. R. "It is of course in the power of the Government to declare any of these ways a public highway but until the Government does so, the courts are bound to be guided by this customary law."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I only wish to refer to the finding of the Division Bench in giving effect to the opinion recorded by the Full Bench. This is their opinion.

"The effect of this finding is that no innovation on the past custom should be allowed especially where such innovations are hurtful to the religious feelings or tend to irritate and annoy the people who occupy the houses on both sides of thoroughfares or common ways."

[Mr. N. Ramakrishna Pillai.]

So far, all the five Judges are agreed. But Mr. Narayana Pillai alone said that Government may throw open the roads; but that observation should be taken as subject to the limitation stated in page 109.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): May I ask whether that statement is with reference to roads directed to be opened? The statement read out is that:

"The effect of this finding is that no innovation on the past custom should be allowed especially where such innovations are hurtful to the religious feelings or tend to irritate and annoy, the people who occupy the houses on both sides of thoroughfares or common ways."

Does not the statement refer to the case where the courts have held these to be public highways?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No. That is to say, where according to the custom the roads were regarded as common ways no innovation can be made if it is hurtful to the religious feelings of the people who occupy the houses.

MR. A. HOOGEWERF (*Nominated*): May I ask Mr. Subba Aiyar, if the resolution is confined only to the Vaikam roads, Government will be prepared to accept it?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Government can accept the resolution only if my friend Mr. Hoogewerf can induce the orthodox people to permit the non-caste people to go through the roads. Government cannot effect a change in the custom. But they will accept and give effect to the order of a civil court in the matter.

Lastly, the prohibitory order was referred to. It was said that Government can withdraw their order if there was no chance of breach of the peace. An attempt at disobedience of the order still continues. So long as there is that attempt I do not know how the order can be withdrawn.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): May I draw the attention of Mr. Subba Aiyar to the opinion of one of the Judges which reads as follows.—

"The action of Government was required to notify to the people that certain roads intended to be public highways were common to all the king's subjects and were open to all classes of people without distinction of caste or creed."

For that, a notification is necessary.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is the opinion of Justice Sitarama Aiyar.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): Of some other Judge, I think.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is Justice Sitarama Aiyer's opinion.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): Yes.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That was in my mind when I said the notice-board was put up earlier. The right existed before, and under the ruling, to notify the right a notice-board was put up. 'Notification' means 'make known to the public' and notice board in those days was probably one of the ways. The notice boards were probably put up in order to give effect to that judgment.

PRESIDENT: That point has already been explained.

MR. N. RAMAKRISHNA PILLAI (*Vaikam cum Ettumanur*): My point is whether Government could not by a notification declare a certain way to be a public way or not.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The majority of the Judges are agreed, and I believe it was adopted that the presumption is that it is a common way. I do not think that I need trouble the House with any further exposition on the point.

Lastly, one matter was referred to by Mr. Kumaran about the Madras G. O. I beg to state Sir, with all deference to Mr. Kumaran, that the Madras Government accepted the resolution brought in the Legislative Council. There was no distinction in Madras between a king's highway and a common way. When there was no distinction, the moment the resolution was brought forward it was accepted, and the rulings of the courts were also to that effect in Madras.

MR. N. KUMARAN (*Nominated*): What about tanks and wells?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes, but Mr. Kumaran evidently has forgotten the recent G. O. When they wanted to give practical effect to it, the incident at Kalpathi took place, and the result was that there was a prohibitory order. There was an agitation, the ultimate result of which was that the Government had to go back upon the original resolution and say that even though there may be a public road maintained out of public funds, yet there may be instances in which particular individuals or communities may have vested rights, and if, for the mere purpose of enforcing an abstract right, a claim is made, the authorities should not support that claim. I made a very strong point about it in my first speech and I say that it stands uncontradicted. The Madras Government have gone back upon their original resolution leaving it to the court to say whether it is a public highway or not. Any party who is aggrieved should go to a civil court. In other words, from an unqualified acceptance of the resolution, they have said that there may be exceptional cases, and that the party aggrieved should go to a court.

MR. N. KUMARAN (*Nominated*): Did not the Madras G. O. lay down that all roads are presumed to be public roads through which all classes of people can walk?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes.

MR. N. KUMARAN (*Nominated*): Is there any exception?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The exception, if proved to the satisfaction of the authorities, will be given effect to.

[Mr. V. Subba Aiyar.]

MR. T. LAKSHMANA PILLAI (*Nominated*): A word of personal explanation. Mr. Subba Aiyar referred to the suggestion of a deputation that I made in the course of my speech. I just want to ask him whether there is anything wrong in Government sending a deputation for the purpose.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think it is rather too much. According to the law obtaining in Madras, the presumption is just the other way. There was no distinction between a common way and a king's highway in Madras. But in Travancore such a difference exists and therefore the presumption is the other way and it was this that led to the passing of the prohibitory order.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): May I know who is responsible for this difference?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): You cannot go behind the rulings of courts. I am even prepared to take the dissenting view of Dr. Ormsby as the correct one. Even then, what are the facts? It is admitted that these people have been never using the roads. I do not know whether a question of presumption arises at all. The Magistrate on the strength of that fact distinctly said that these people have never been using that road. I do not know whether a question of presumption arises at all in the circumstances of the case where the fact is admitted that they *never* have been using the road, and therefore the only parties who should go to a court are the parties affected thereby.

MR. N. KUMARAN (*Nominated*): May I point out that the fact is not admitted?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Let us take it that it is a disputed matter. But the Magistrate's order says that they have been never using that road. Therefore the only course is to go to a court of law. In the face of the long established customs countenanced by courts and in the face of the prohibitory order, will this House suggest that an executive fiat should issue throwing open these roads. The Government would be making a very dangerous precedent by undertaking such a serious responsibility in the matter. I ask Mr. Mammen Mappillai whether there has not been a serious dispute in his own church. In the case of the disputed possession of his Seminary, will he ask the executive Government to interfere or the civil court? To say that all the force of the executive Government should be used in the matter is unreasonable and impracticable. In this particular case the parties aggrieved by the Magisterial order should go to a Civil Court and have their rights established. If once the Executive Government begin to settle religious disputes or *quasi* religious disputes, I can only say that it will rather become a dangerous precedent. I have only to refer the House to 31 Madras, because my friend said that from non-user you

cannot presume anything. When a question arises whether a particular community is entitled to use the road, the question of non-use is relevant and custom is the only guide. In disposing of the appeal, Their Lordship of the Privy Council said: "the argument addressed to Their Lordships was directed rather against the soundness of the doctrine asserted by the respondents as involving the exclusion of Nadars, and it was endeavoured to show that there were inconsistencies in the respondents' treatment of the appellants in other respects. All this, however, as a matter of theological treatment, is too rationalistic; while, on the other hand, it wanders from the region of fact and custom. What the respondents have succeeded in proving is that by custom the appellants are not among the people for whose worship this particular temple exists."

And so in a matter of this kind they said that it is sufficient guarantee that the fact that they were never using the road is sufficient for the purpose of disposing of the case.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know from Mr. Subba Aiyar whether in case dedication is established, non-user would affect the question?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No. If dedication to the whole of the public is established, non-user may not be of much importance. But to know whether there has been a dedication the fact of non-user is very important.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether from user dedication is inferable?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No, I may refer my friend Mr. Narayana Pillai to 7 T. L. J. and 9 T. L. J. These are the cases in which they say that in Travancore from user dedication is not inferable.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know whether in that case the right of way was claimed over private land?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It does not make any difference whether it is private or public land. In the 5 T. L. R. case it is a public land and Mr. P. K. Narayana Pillai referred to it. Therefore the principle is all the same.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is there no difference after the passing of the Land Conservancy Regulation?

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): My point is that all these are connected with religious sentiments but in this particular case it is not really so. As illustration, all that I said was that similar sentiments were being adduced in the admission of pupils of certain classes into Sirkar Schools. I asked him whether he knew of cases where such things had been done. He said that he did not know. I may just mention that Mr. Govindan, the District Judge in Trivandrum, applied for admission and was refused.

PRESIDENT: You cannot make a statement, but you can only give some personal explanation, if necessary. Otherwise, you will be making a second speech.

[Mr. N. Kumaran.]

MR. K. C. MAMMEN MAPPILLAI (*Commerce and Industries, North*): My point is whenever anything is connected with temple or temple worship, there is the question of religious sentiments involved in it. In any other matter there may not be such a question.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is only in that that my friend and myself are at issue. When people say that the temple will be polluted, we cannot go against them. I think I have sufficiently explained the facts and the circumstances. In conclusion I once more appeal to the House to realise its sense of responsibility, to realise the difficulty and delicacy of Government in a matter of this kind and not to ask Government to set aside the order of a District Magistrate by an executive order and say that there is a right of way to the whole public over the roads in question. These are questions which should be decided by a Civil Court.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): I wish to ascertain from the Law Member whether it is not open to Government before giving effect to this resolution to refer this question to a properly constituted sub-committee with suitable powers to make enquiries and collect evidence and report on this question?

PRESIDENT: You must bring it in the form of another resolution.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): One thing more. Whatever may be the form of this resolution,—and I have already pointed out that the resolution as it is is too vague to be given effect to—whatever may be the fate of this resolution, whether it is to be carried or rejected by this House, I can assure the members of this House that every matter that has been referred to in the speeches of the members of the House will deserve careful consideration at the hands of the Government.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): What I wanted is whether it is not in the power of the Government to refuse giving effect to the resolution if there is any real and legally technical objection.

PRESIDENT: The resolution is only in the form of a recommendation. So the question does not arise.

MR. N. KUMARAN (*Nominated*): Will Mr. Subba Aiyar tell us whether when the Chakkalas were admitted into the temples, the religious sentiments of caste Hindus were affected?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In the first place I never knew that between them and other Nayars there was pollution. I do not know their ancient history. Therefore, I am not in a position to give any information.

MR. N. KUMARAN (*Nominated*): Does Mr. Subba Aiyar know that they were not admitted till a few years ago?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): It may be so. I do not know that exactly.

MR. N. KUMARAN (*Nominated*): Did any caste Hindu or any section of caste Hindus make any objection when they were admitted into these temples?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): I am not in a position to remember such incidents. I believe that if my friend, will probably interpellate the members of the Government on that point he will be able to get at an answer. But I am not in possession of any information on that subject.

MR. N. KUMARAN (*Nominated*): May I know whether Mr. Subba Aiyar is aware that the prohibition boards at Vaikam were not formerly in the places where they are now posted?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): I believe that they were shifted.

MR. N. KUMARAN (*Nominated*): Has not that shifting affected the religious sentiments of the Hindu community?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): No. For, when they wanted to prescribe the *sanketham* limits they overhit the mark and therefore when the notice boards were removed to the places in which they now are they have no objection since the *sanketham* limits were not diminished. On the representation of the communities concerned, the Government wanted to limit it to the shortest possible distance and to that limit the notice boards were shifted.

MR. N. KUMARAN (*Nominated*): Is he aware that these notice boards are not at equal distances?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): Probably not. The object may be that, when a man goes there, it may not serve any useful purpose because he will have to stop as soon as he reaches that place and return. The necessity for a man's going there will be with some purpose or other, than merely to go to the notice board. Therefore these notice boards are placed in such places so as to enable the prohibited classes to make use of other ways which are near these notice boards.

MR. N. KUMARAN (*Nominated*): I think he has misunderstood my question whether there is not a difference in distance.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Wakil*): Even now what I say is that it is evidently due to the fact that the necessity of the notice board comes in only at a place where there is chance of the person prohibited coming within the prohibited area.

MR. A. HOOGEWERF (*Nominated*): Is the pollution distance in the Vaikam road from the Vaikam temple not the same on all the four sides of the temple?

PRESIDENT: This very question was put to him by Mr. Kumaran and he has answered it.

[Mr. N. Kumaran.]

MR. A. HOOGEWERF (*Nominated*): Having once pronounced the Kalpathi roads to be public roads—

PRESIDENT: Who made the pronouncement?

MR. A. HOOGEWERF (*Nominated*): The Government order.

PRESIDENT: You are speaking about the original order. It is not relevant. It is the latest order that is relevant.

MR. A. HOOGEWERF (*Nominated*): Having once passed a certain order, is it consistent and statesmanlike on the part of the Government to go back upon the order and place restrictions upon that?

PRESIDENT: I do not think that Mr. Subba Aiyar can criticise the Madras Government.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): My friend Mr. Hoogewerf must ask some members of the Madras Legislative Council to interpellate that Government on the point.

MR. A. HOOGEWERF (*Nominated*): I only brought forward this question because Mr. Subba Aiyar brought forward the Kalpathi incident to suit his case.

PRESIDENT: But that was with a different object.

Mr. Kumaran, do you press your resolution to the vote of the House?

MR. N. KUMARAN (*Nominated*): I would request the President to remove the official block if possible.

PRESIDENT: I am very sorry I cannot do that.

MR. N. KUMARAN (*Nominated*): Then I press the motion.

The motion was put to the vote of the House and 19 voted *for* and 22 *against*.

MR. N. KUMARAN (*Nominated*): I demand a poll.

A poll was taken with the following result:—

AYES—21

- | | |
|---|--------------------------------|
| 1. Mr. Paul V. Daniel | 12. Mr. P. K. Narayana Pillai |
| 2. „ A. Govinda Menon | 13. „ J. John Nidiry |
| 3. „ A. Hoogewerf | 14. „ M. N. Pillai |
| 4. „ C. P. Kochakunju Pillai | 15. „ N. Padmanabha Pillai |
| 5. „ N. Kumaran | 16. „ K. Paramesvaran Pillai |
| 6. „ T. Kumara Pillai | (Tiruvalla.) |
| 7. „ Tariatu Kunjittomman | 17. „ G. Paramesvaran Pillai |
| 8. „ V. Kunjukrishna Pillai | 18. „ N. Ramakrishna Pillai |
| 9. The Rev. Fr. Kuriakose Vettikkapalli | 19. „ S. Subrahmanya Karayalar |
| 10. Mr. M. R. Madhava Variar | 20. „ Dominic Tomman |
| 11. „ K. C. Mammen Mappilla | 21. „ T. K. Velu Pillai |

NOES—22.

- | | |
|---|--|
| 1. Mr. I. C. Chacko | 12. Mr. P. Paramesvaran |
| 2. „ R. Dhanukoti Pillai | 13. „ W. H. Pitt |
| 3. „ K. George | 14. Mrs. M. Poonen Lukose |
| 4. Khan Sahib M. K. Khadir Pillai | 15. Mr. M. Raja Raja Varma |
| 5. Rao Bahadur K. A. Krishna Aiyangar | 16. Rao Bahadur K. V. Ranga-swami Aiyangar |
| 6. Mr. S. Krishna Aiyar | 17. Mr. S. C. H. Robinson |
| 7. „ R. Krishna Pillai | 18. „ J. Stephenson |
| 8. „ K. V. Natesa Aiyar | 19. „ V. Subba Aiyar |
| 9. „ Joseph Panjikaran | 20. „ P. T. Thomas |
| 10. „ S. Paramesvara Aiyar | 21. „ A. J. Van Ross |
| 11. „ K. Paramesvaran Pillai
(Director of Agri culture.) | 22. „ Trivikramar Vasu-devar |

The motion was declared lost.

PRESIDENT: I think we may rise now and meet again at half-past eleven on Monday.

The Council rose at 4-50 of the clock to meet again on Monday at 11-30 A. M.

T. P. RAMASUBBA AIYAR
Secretary to the Legislative Council.